

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0720

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On December 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 23 to December 1, 2018 (decision # 70416). Claimant filed a timely request for hearing. On January 16, 2019, ALJ Frank conducted a hearing, and on January 18, 2019, issued Order No. 19-UI-123061, concluding claimant was not available for work from September 23, 2018 through January 12, 2019. On February 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On March 6, 2019, EAB issued Appeals Board Decision 2019-EAB-0117, affirming Order No. 19-UI-123061. On April 5, 2019, Appeals Board Decision 2019-EAB-0117 became final without claimant having filed a petition for judicial review with the Court of Appeals.

On June 18, 2019, the Department served notice of an administrative decision assessing a \$1,904 overpayment based on Appeals Board Decision 2019-EAB-0117 (decision # 134738). Claimant filed a timely request for hearing. On July 24, 2019, ALJ Murdock conducted a hearing, and on July 25, 2019, issued Order No. 19-UI-134001, affirming decision # 134738. On August 5, 2019, claimant filed an application for review of Order No. 19-UI-134001 with EAB.

Claimant's written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On August 9, 2018, claimant filed an initial claim for benefits. Claimant's claim was determined valid, with a weekly benefit amount of \$238.

(2) Claimant claimed and received benefits for the weeks of September 30, 2018 through November 24, 2018 (weeks 40-18 through 47-18), the weeks at issue. For each of the weeks at issue, claimant reported to the Department that he was available for all suitable work. The Department paid claimant \$238 for each of the weeks at issue, for a total of \$1,904.

CONCLUSIONS AND REASONS: Claimant was overpaid \$1,904 that he is liable to repay or have deducted from any future benefits otherwise payable to him.

ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Claimant agreed at hearing that he received \$238 for each of the weeks at issue. Transcript at 9. Claimant also agreed that when he made his claim reports for each of the weeks at issue, he represented to the Department that he was available for work. Transcript at 9. The issue is whether claimant's representations of availability were false. If claimant made such misrepresentations, he would be liable to repay the benefits he received or have them deducted from future benefits, even if he did not know the representations were false when made.

At hearing, claimant presented information in an attempt to show that the decision establishing that he was not available for work during the weeks at issue, decision # 70416, was not correctly decided. Transcript at 10-11, 12-16, 17-19, 22. However, principals of decision finality preclude claimant from re-litigating in one proceeding matters found against him in an earlier, separate proceeding. The proper way for claimant to challenge conclusions about his availability for work during the weeks at issue was in the proceeding arising from decision # 70416, and not in the proceeding arising from decision # 134738. However, Appeals Board Decision 2019-EAB-0117, which affirmed that claimant was not available for work during the weeks at issue, became final without claimant having filed a petition for judicial review with the Court of Appeals.

As a result of Appeals Board Decision 2019-EAB-0117 becoming final, it establishes as a matter of law that claimant was not available for work during the weeks at issue. Therefore, also as matter of law, claimant's representations to the Department that he was available for work during those weeks were false. Because claimant would not have received benefits during the weeks at issue unless he reported that he was available for work, claimant is liable to repay the \$1,904 in benefits he received during those weeks, or have it deducted from any future benefits otherwise payable to him.

DECISION: Order No. 19-UI-134001 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: September 11, 2019

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the

'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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