

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0958

Reversed & Remanded

PROCEDURAL HISTORY: On August 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$1,658 in benefits, and liable for a \$414.50 monetary penalty and 11 penalty weeks (decision # 193519). Claimant filed a timely request for hearing. On September 23, 2019, ALJ Seideman conducted a hearing, and on September 24, 2019 issued Order No. 19-UI-136961, affirming the Department's decision. On October 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

CONCLUSIONS AND REASONS: This matter must be reversed as unsupported by a complete record, and remanded for a hearing in the first instance.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986).

At the beginning of the hearing, before the ALJ swore in witnesses or took evidence the following occurred:

Claimant: I do – you know – understand what went wrong here. And, uh – because of the overpayment – and, um, and I have actually been in contact with, um, the Employment Department with the – um, you know – overpayment investigations department, and, um, because I wanted to actually, um, settle payment. And they told me that I needed to wait until the hearing and to present – um, you know, my request now. And, um, I can pay the overpayment as the sixteen hundred and – and some-odd dollars, and, um, but I was, uh, going to ask if the - the penalty could be waived.

ALJ: Uh, [Department's witness], and you also understand there are penalty weeks, too, uh, right? The eleven weeks?

OED: Yes, that's correct.

ALJ: Yeah, now are you requesting that also, [claimant]?

Claimant: Um, if – if possible, I mean if we could come up with the agreement, um – I w– yes.

ALJ: And do you have any comment on that [Department's witness]?

OED: I – I – I don't. It depends on the outcome of this – uh, this hearing.

ALJ: Yeah. I think as a practical matter, [claimant], the only recourse we have – the only alternative I have now – unless the Employment Department would want to say 'well no, we'll do this, such and such' – um, unless you would withdraw your request, uh – I need to go ahead and go forward with the hearing. Again, unless they agree to – uh, we – we can't get into negotiating right now, but if you had, for instance if you're going to agree with the whole thing, hey, okay, we could, but if it's a partial that'd be difficult to do at this part of the hearing.

Claimant: And actually I'm – I'm – I'm in agreement with – with everything that we have documented.

ALJ: Is that [claimant] that said that?

Claimant: Yes, I'm sorry.

ALJ: Okay. Are you saying you're agreeable with the overpayment and the penalty amount and the penalty weeks?

Claimant: Yes.

ALJ: Okay. Um, do you want me to then go ahead and enter an order – uh – in that regard? Uh – uh – if – it's up to you, uh, I want to be sure you understand.

Claimant: Um, uh, yes, because, I mean the – you know, you know – there were overpayments, I – I understand that, um, and – and so, um, I'm – you know, um – I'm in agreement with that. And then – uh, we can, um, come up with an agreement as far as the repayment and stuff that would be, you know, I'd be fine with that.

ALJ: Okay.

Claimant: Is – is that where we're headed?

ALJ: Yeah, I guess [Department's witness], do you have any comment on that?

OED: Um – I, uh, she would have to make those arrangements with the, um, over – the overpayment unit itself. They're the ones that can make those decisions, on, um, her payments and – and things. I would have no part – I would have no knowledge of it.

ALJ: I think [claimant] what it amounts to is if you want to you could agree that we would have – that I would enter the judgment that is sought here, but there are no specific arrangements on that, you'd have to make those arrangements with – um, uh – at the Department. Um, probably on the same – kind of on the same basis as if we had the hearing and I ruled that way. Uh – do you follow me there?

[unintelligible]

Claimant: Um, it's really funny because I was talking to them and they told me that that could not be determined until the hearing. So – I – yeah –

[unintelligible]

ALJ: Well, so, now we're in the hearing, we're in the hearing, and we have I think as I see it two choices. One is to go ahead and go through the hearing, or, if you decide 'hey I don't need a hearing but I in essence I – I confess to all of that' then I could issue the order.

Claimant: Yes, that's fine.

ALJ: Would you want me to do that without having the hearing?

Claimant: Yes, because in the end it's probably going to end up that way anyway [laughs].

ALJ: Okay, well, okay . . .

Audio recording at 1:45-6:10. The ALJ then swore claimant in, asked if she agreed that the ALJ should enter a decision affirming the Department's decision, and claimant said yes. The ALJ then stated that claimant could "Work out whatever deal you're going to work out with the Employment Department." Audio recording at 7:05.

It is clear from claimant's comments during the hearing that she wanted to negotiate a settlement and elimination of monetary penalty and perhaps penalty weeks, but believed that she could not both do that and have a hearing. It is equally clear that claimant did not realize that by agreeing that the ALJ enter a decision affirming the Department's decision claimant was essentially waiving her rights to contest the Department's assessment of a monetary penalty or penalty weeks. Rather, claimant agreed to the ALJ's proposed course of action because she thought doing so was the only way she would be allowed to negotiate a settlement of the overpayment and penalty matters with the Department.

Because the ALJ failed to conduct any inquiry beyond essentially asking claimant if she “confessed” to the findings as set forth in decision # 193519, further development of the record is necessary for a determination of whether claimant was in fact overpaid and liable for penalties based upon a willful misrepresentation. Order No. 19-UI-136961 therefore is reversed, and this matter remanded for a new hearing that includes testimony from all parties present on the matters at issue in decision # 193519.

DECISION: Order No. 19-UI-136961 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 17, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. Order No. 19-UI-136961 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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