

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0982-R

Request for Reconsideration Granted
EAB Decision 2019-EAB-0982 Modified on Reconsideration
Order No. 19-UI-137083 Modified
Further Reduced Overpayment and Penalties

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 12, 2019, the Oregon Employment Department (Department) served notice of an administrative decision that denied claimant benefits, concluding that the employer discharged claimant for committing an act that disqualified him from receiving benefits, effective January 13, 2019 (decision # 160047). On August 1, 2019, decision # 160047 became final without claimant having filed a timely request for hearing. On August 8, 2019, the Department served notice of an administrative decision concluding that claimant willfully underreported earnings and failed to report his work separation from the employer, and therefore was overpaid \$10,302 in benefits that he must repay, assessed a \$1,545.30 monetary penalty, and disqualified for 52 weeks of future benefits (decision # 193665). Claimant filed a timely request for hearing on decision # 193665. On September 23, 2019, ALJ Wyatt conducted a hearing at which the employer failed to appear, and on September 25, 2019, issued Order No. 19-UI-137083, affirming decision # 193665.

On October 15, 2019, the Department filed an application for review of decision # 193665 with the Employment Appeals Board (EAB). On November 21, 2019, EAB issued EAB Decision 2019-EAB-0982, modifying Order No. 19-UI-137083 based on additional evidence submitted by the Department, which EAB received into evidence as EAB Exhibit 1 and considered under OAR 471-041-0090 (May 13, 2019). EAB Decision 2019-EAB-0982 reduced the amount of the overpayment to \$6,558, the amount of the monetary penalty to \$983.70, and the disqualification for future benefits to 47 weeks. On December 2, 2019, the Department filed a timely request for reconsideration of EAB Decision 2019-EAB-0982 to correct errors of material fact and law that included a statement that a copy was provided to the other parties. The employer's request for reconsideration therefore is granted, and this decision

being issued pursuant to EAB's authority under ORS 657.290(3) and OAR 471-041-0145(1) (May 13, 2019).

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is contained in the written argument the Department submitted with its request for reconsideration, which has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 2 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

CONCLUSIONS AND REASONS: Claimant is assessed a \$6,240 overpayment and a \$936 monetary penalty, both of which he is liable to repay to the Department or to have deducted from future benefits otherwise payable to him. Claimant also is disqualified for 44 weeks of future benefits.

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.* An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052 (January 11, 2018), which provides, in pertinent part, that when the disqualifying acts under ORS 657.215 relate to the provisions of 657.176 and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying acts by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying acts, rounding off to the nearest two decimal places, multiplying the result by four, rounding it up to the nearest whole number, and adding four weeks. OAR 471-030-0052(1)(d).

In written argument, the Department asserted that EAB Decision 2019-EAB-0982 erred in finding that week 15/19 should have been claimant's waiting week, that he therefore was overpaid \$318 in benefits for that week, and overpaid at total of \$6558 for the weeks at issue. EAB Exhibit 2. According to the Department, claimant's waiting week was assigned to week 49/18, and that claimant therefore was entitled to the \$318 in benefits he received for week 15/19, and was overpaid \$6240 for the weeks at issue. EAB Exhibit 2. The Department further asserted that EAB Decision 2019-EAB-0982 therefore erred finding that the claimant was disqualified for 47 weeks of future benefits, and liable for a \$983.70 monetary penalty. EAB Exhibit 2. According to the Department, claimant should be disqualified for 44 weeks of future benefits, and liable for a \$936 monetary penalty. EAB Exhibit 2.

On review of the entire record, including EAB Exhibits 1 and 2, EAB agrees with the Department's argument. Claimant therefore is assessed a \$6,240 overpayment and a \$936 monetary penalty, both of which he is liable to repay to the Department or to have deducted from future benefits otherwise payable to him. Claimant also is disqualified for 44 weeks of future benefits.

DECISION: The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2019-EAB-0982 and Order No. 19-UI-137083 are modified, as outlined above.

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

DATE of Service: December 23, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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