

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1000

Affirmed
Disqualified Effective Week 02-19
Overpayment & Penalties

PROCEDURAL HISTORY: On August 7, 2019, the Oregon Employment Department (the Department) serve notice of an administrative decision concluding claimant quit work without good cause (decision # 165249). On August 8, 2019, the Department served notice of another administrative decision, based in part upon decision # 165249, assessing a \$10,732 overpayment, \$1,609.80 monetary penalty, and 52 penalty weeks (decision # 193670). Claimant filed a timely request for hearing on each administrative decision.

On October 2, 2019, ALJ M. Davis conducted a consolidated hearing concerning the two decisions, and on October 3, 2019 issued Order No. 19-UI-137485, affirming decision # 165249, and Order No. 19-UI-137487, affirming decision # 193670. On August 6, 2019, claimant filed an application for review of each order with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-137485 and 19-UI-137487. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0999 and 2019-EAB-1000).

FINDINGS OF FACT: (1) On October 25, 2018, claimant filed an initial claim for unemployment insurance benefits. His weekly benefit amount was \$624, the maximum weekly benefit amount in effect at the time.

(2) Prior to October 25, 2018, claimant worked as a senior policy analyst for Clackamas County during the day shift at a wage of approximately \$38 per hour. However, after his work separation, claimant was unsuccessful in obtaining similar employment and began seeking other work that paid a lesser wage in an effort to secure any gainful employment.

(3) In December 2018, claimant applied for a job as a security guard with Veteran Infrastructure Products, LLC. That employer hired him and claimant worked for the employer from December 14, 2018 until January 10, 2019. At hire, claimant believed that he would be working for the employer in an

on-site position, from 6:00 p.m. until 11:00 p.m., his preferred shift. However, when claimant completed his new-hire paperwork, he only indicated that he was not available on Mondays or Wednesday nights, but otherwise “would take any shift and...was completely open.” Transcript at 33.

(4) Shortly thereafter, the employer scheduled claimant to work in a patrol position from 8:00 p.m. to 4:30 a.m. Claimant’s hourly wage was \$13.80 per hour. The median rate of pay for work as a security guard in claimant’s labor market was \$13.31 per hour.

(5) Claimant believed that working in a patrol position from 8:00 p.m. to 4:30 a.m. interfered with his sleep and ability to search for other work during the day. Claimant spoke to his supervisor about a shift change to an on-site position with hours from 6:00 p.m. to 11:00 p.m. His supervisor told him there were no such positions available. Claimant did not speak to any employer human resources representative about his desire to change shifts.

(6) On January 10, 2019, claimant quit his job with the employer because working a graveyard shift interfered with his sleep and ability to search for other work during the day, the work was not comparable to the work he had done before and he was not comfortable working under a supervisor whose ethics and morals he questioned. He resigned by sending an email to a supervisor that said, in pertinent part, “I find it necessary to resign my position effective immediately.” Transcript at 10. Claimant would not have quit work when he did if he had been assigned to work in an on-site position outside of a graveyard shift.

(7) Claimant claimed and was paid benefits for the weeks including January 6 through May 11, 2019 (weeks 02-19 through 19-19) the weeks at issue. When claimant claimed benefits for the week including January 10, 2019 (week 02-19), he reported to the Department that he had not quit a job during that week. When claimant submitted his claim for that week, he certified that all of his reports were true and accurate. Based on claimant’s report to the Department for week 02-19 that he had not quit a job that week, and his subsequent claims for weeks 03-19 through 19-19, the Department paid claimant a total of \$10,732.00 in regular benefits.

(8) Had claimant reported any work separation when he filed his claim for week 02-19, the Department would have suspended payment of benefits until the Department adjudicated the issue. Claimant was aware of that circumstance because his work separation from his prior employer in or around October 2019 had only been resolved on December 26, 2019, when that adjudication was completed. By not reporting any work separation, benefits were automatically paid.

(9) On July 17, 2019, the Department received information from the employer that claimant had quit work on January 10, 2019. It conducted an investigation, and on August 7, 2019, issued decision # 165249 concluding claimant quit work without good cause.

CONCLUSIONS AND REASONS: Claimant quit work without good cause. Claimant was overpaid \$10,732 in benefits due to a willful misrepresentation about his work separation, and is liable for a \$1,609.80 monetary penalty and a 52 penalty disqualification from future benefits.

Voluntary Quit. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when

they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4). Quitting suitable work to seek other work is not good cause. OAR 471-030-0038(5)(b)(A). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

To the extent claimant quit work because he was scheduled to work only graveyard shifts, he failed to establish good cause for doing so. Claimant did not dispute that when he completed his new-hire paperwork, he represented to the employer that other than on Mondays and Wednesdays he “would take any shift and...was completely open.” Moreover, to the extent that working those shifts interfered with his sleep and may have made it more difficult to seek and obtain work comparable to his prior work with Clackamas County, claimant failed to show that those circumstances, viewed objectively, created a grave situation for him. Individuals often work graveyard shifts and are successful in modifying their sleep patterns. And, substitute employment typically is searched and applied for online with applications submitted online at any time of the day or night with interviews, if desired or requested, arranged to take place at a time acceptable to both parties. Claimant also failed to pursue the reasonable alternative of speaking to anyone in the employer’s human resources or executive office about the possibility of changing the time of his shifts before abruptly quitting.

To the extent claimant quit work because he could not work “under the supervision of someone whose morals and ethics [he thought were] questionable” he failed to show good cause for doing so. Claimant presented that concern to the employer’s CEO within his resignation email and there was no evidence that he gave anyone at the employer an opportunity to address his concern before quitting, or that his concerns were of such gravity that any reasonable and prudent person would have quit without giving the employer the opportunity to resolve his concerns.

To the extent claimant quit work because he did not consider his security guard work comparable to his prior work as a policy analyst for a local government he failed to establish good cause for doing so. However, claimant chose to seek and obtain that kind of work. Claimant admitted that he would have continued working for the employer if it had changed his shift to one he desired. Transcript at 24. Accordingly, claimant failed to show that doing security guard work created a grave situation for him.

Viewing the record as a whole, claimant failed to show that no reasonable and prudent person in his circumstances would have continued to work for the employer for an additional period of time, at least until that person had brought his concerns to the employer for possible resolution. Claimant therefore quit work without good cause, and he is disqualified from receiving unemployment insurance benefits because of his work separation effective January 6, 2019 and until he has earned at least four times his weekly benefit amount from work in subject employment.

Overpayment. 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 was disqualified from receiving benefits for weeks 02-19 through 19-19 because he quit work on January 10, 2019 without good cause. He received \$10,732 in benefits for those weeks that he was not entitled to receive. The reason claimant received those benefits is that he falsely reported to the Department that he had not quit a job during week 02-19. Regardless of claimant's knowledge or intent in making that report, because his false report caused him to be overpaid, claimant is liable to repay the \$10,732 overpayment to the Department or have it deducted from future benefits otherwise payable.

Misrepresentation. 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).

Claimant did not dispute the Department's evidence that when he claimed benefits for the week including January 6 through January 12, 2019 he certified as true his report to the Department that he had not quit a job during that week even though he had sent a resignation email to the employer on January 10, 2019, just days before filing his claim. Rather, he asserted, "I believe I reported a lack of work, which there was a lack of work that I - I had done prior to being a security guard" which he contended was an accurate report. Transcript at 13-14. However, claimant's explanations were not credible. Claimant knew he had quit his job because his job with the employer ended when he sent an email stating that he was "resign[ing] my position effective immediately." Claimant was likely aware that reporting his resignation would cause the Department not to pay him benefits immediately based upon his experience reporting a work separation from a prior employer the previous October. More likely than not, claimant understood that by not reporting any work separation when claiming benefits for week 02-19, benefits would quickly be paid. Viewing the record as a whole, claimant's false report to the Department regarding his work separation was willful and made to obtain benefits. For that reason claimant is liable for both penalty weeks and a monetary penalty.

Penalties. The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052(1)(b) (January 11, 2018), which provides, in pertinent part, that when the disqualification is imposed because of disqualifying acts under ORS 657.176, the number of weeks of disqualification is determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), 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 act(s), rounding off to the nearest two decimal places, multiplying the result by four, rounding it up to the nearest whole number. Claimant's overpayment was \$10,732, divided by the maximum weekly benefit amount in effect at the time of \$624 equals 17.20, multiplied by four equals 68.848, rounded up to the nearest whole number equals 69. However, because under ORS 657.215, the number of penalty disqualification weeks may not exceed 52, claimant is assessed a 52 week penalty disqualification from future benefits.

The monetary penalty amount is based upon the number of occurrences of misrepresentation made by claimant; an occurrence is counted each time claimant willfully makes a false statement to obtain benefits. OAR 471-030-0052(7). For the first or second occurrence within five years, the penalty equals

15 percent of the total overpayment. OAR 471-030-0052(7)(a). Here, claimant made one misrepresentation, when he falsely reported that he had not quit a job during week 02-19. Claimant is therefore liable for a penalty equal to 15% of his \$10,732 overpayment. 15% of \$10,732 equals \$1,609.80.

Conclusion. Claimant voluntarily left work for the employer without good cause and is disqualified from receiving benefits effective January 6, 2019. Claimant was overpaid \$10,732 in benefits and, as a result of making a willful misrepresentation to the Department, he is liable for a \$1,609.80 monetary penalty and 52 penalty weeks.

DECISION: Order Nos. 19-UI-137485 and 19-UI-137487 are affirmed.

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

DATE of Service: November 25, 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 desisyong ito.

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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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 الإستئناف 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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