

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1014

Modified
Overpayment Reduced, No Penalties

PROCEDURAL HISTORY: On August 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant underreported her income and failed to report a work separation and assessed a \$913 overpayment, \$182.60 monetary penalty, and 10 penalty weeks (decision # 195604). Claimant filed a timely request for hearing. On September 25, 2019, ALJ Seideman conducted a hearing, and on September 27, 2019 issued Order No. 19-UI-137179, affirming the Department's decision. On October 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written arguments when reaching this decision.

EVIDENTIARY RULING: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). Claimant submitted the additional evidence with her October 16th application for review and her November 8th written argument. The additional evidence includes claimant's pay records, schedules, pay stubs, bank records, etc. The October 16th materials have been marked as EAB Exhibit 1, and the November 8th materials have been marked as EAB Exhibit 2. A copy of each has been provided or made available to the parties to this decision. Any party that objects to our admitting EAB Exhibits 1 and 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.

FINDINGS OF FACT: (1) On May 20, 2019, claimant filed an initial claim for unemployment insurance benefits. Her weekly benefit amount was \$355.00.

(2) During the week ending June 1, 2019 (week 22-19), claimant received 8 hours of vacation pay at a rate of \$33.98 per hour from Concorde Career Colleges, Inc., for a total of \$271.84. When claimant filed a weekly claim for benefits for week 22-19, she reported to the Department that she had earned \$271.84. The Department paid claimant reduced benefits in the amount of \$203.00.

(3) On June 16, 2019, claimant voluntarily left her job with Concorde. The voluntary leaving was without good cause under Employment Department law, and claimant was therefore disqualified from receiving unemployment insurance benefits effective June 16, 2019.¹

(4) Claimant filed weekly claims for the weeks ending June 29, 2019 (week 26-19) and July 6, 2019 (week 27-19). Claimant did not report the voluntary leaving to the Department when she filed her weekly claims for benefits. Claimant thought she was still working for the employer.

(5) Because claimant claimed benefits without reporting a work separation, the Department paid her \$355 for each of those weeks in unemployment insurance benefits, for a total of \$710.00.

CONCLUSIONS AND REASONS: Claimant was overpaid \$710.00 and is liable to repay that amount to the Department. Claimant is not liable for misrepresentation penalties.

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. ORS 657.310(1).

The order under review concluded that the Department overpaid claimant \$203.00 for week 22-19 because although claimant claimed she had earnings in the amount of \$271.84 for that week, the employer's report that claimant earned \$401.96 that week was more credible. Order No. 19-UI-137179 at 3. The record does not support that conclusion.

The evidence that claimant earned \$401.96 during week 22-19 consists of a "report of hours worked" summarizing records of claimant's work during that week, which the employer submitted to the Department. *See Exhibit 3.* The evidence that supported claimant's assertion includes copies of the employer's "timecard editor" that included a breakdown of how many hours claimant worked each day during week 22-19, from May 26, 2019 through June 1, 2019. *See EAB Exhibit 1.* Claimant's evidence also included her pay period earnings statements, which shows that the employer's \$401.96 figure corresponds to a roughly two-week period, and does not include only one week's earnings as the employer's report of hours worked indicated.

Claimant's evidence is therefore conclusive proof that she accurately reported her earnings to the Department when she filed her weekly claim for benefits for week 22-19, and that she earned only \$271.84 for that week. The Department therefore correctly paid claimant reduced benefits in the amount of \$203.00 for that week, and claimant was not overpaid.

¹ EAB has taken notice of the facts in this paragraph, which are contained in Order No. 19-UI-136071, which was mailed to the parties on September 4, 2019, and which EAB affirmed in EAB Decision 2019-EAB-0875, which was mailed to the parties on October 11, 2019. OAR 471-041-0090(1) (May 13, 2019). All parties to this case have previously been served with copies of both of those decisions, and additional copies will be provided or made available to the parties upon request. Any party that objects to our taking notice of this information 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 noticed facts will remain in the record.

With respect to weeks 26-19 and 27-19, however, the record establishes that claimant was overpaid. EAB Decision 2019-EAB-0875, which affirmed the Department's and the Office of Administrative Hearings' orders finding claimant was disqualified from unemployment insurance benefits effective June 16, 2019 after voluntarily quitting her job with Concorde, became final on October 31, 2019. By operation of that decision, claimant is not eligible for benefits beginning June 16th as a matter of law. Any benefit she was paid after June 16th was, therefore, an overpayment of benefits she was not qualified to receive. The Department overpaid claimant \$710.00 in benefits.

Claimant received the overpayment because she did not report her voluntary leaving to the Department when she filed her weekly claims for benefits. Regardless of claimant's knowledge or intent in failing to report the voluntary leaving, because that was the reason she was overpaid benefits she is liable to repay the \$710.00 overpayment to the Department or have that amount 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. 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 order under review concluded that claimant was liable for a monetary penalty equal to 20% of the total overpayment, or \$182.60, and also liable for a 10-week penalty disqualification from future benefits. Order No. 19-UI-137179 at 3-4. The order reasoned only that "[i]t is clear that the claimant intentionally made the misrepresentations" and penalties should be imposed, but did not explain why it was clear that claimant misrepresented anything, nor is a reason discernable from the record, particularly since claimant provided clear records substantiating the accuracy and truthfulness of her reports to the Department about her earnings. *See* Order No. 19-UI-137179 at 4. The record therefore does not support a finding that claimant should be liable for penalties.

With respect to week 22-19, the preponderance of the evidence establishes that claimant truthfully and accurately reported her earnings to the Department. With respect to weeks 26-19 and 27-19, claimant testified that she did not report her voluntary leaving because she thought she was still working for the employer. While claimant was mistaken about that, a mistake is not a willful misrepresentation. Absent evidence suggesting that claimant withheld information about her work separation on purpose, so the Department would pay her benefits, the record does not support a finding that claimant made a misrepresentation, and imposition of penalties is not appropriate.

Claimant is not liable for any monetary penalty, and is not liable for any penalty weeks.

DECISION: Order No. 19-UI-137179 is modified, as outlined above. Claimant is liable only to repay a \$710.00 overpayment or have that amount deducted from future benefits otherwise payable.

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

DATE of Service: November 19, 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

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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