

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1055

Order 19-UI-138265 Modified
Overpayment Reduced; No Penalties

PROCEDURAL HISTORY: On June 28, 2019, the Oregon Employment Department (Department) served notice of an administrative decision concluding that on March 28, 2018, claimant voluntarily left work with Walsh Custom Landscape Inc. without good cause and was disqualified from receiving benefits effective March 25, 2018 (decision # 84008). On July 18, 2019, decision # 84008 became final without a request for hearing having been filed. On August 1, 2019, the Department served notice of another administrative decision, based in part on decision # 84008, assessing a \$960 overpayment, a \$144 monetary penalty, and 11 penalty disqualification weeks (decision # 200126).

On August 5, 2019, claimant filed a late request for hearing on decision # 84008, and a timely request for hearing on decision # 200126. On August 20, 2019, ALJ Seideman conducted a hearing regarding decision # 84008, at which the employer failed to appear, and on August 23, 2019, issued Order No. 19-UI-135495 allowing claimant's late request for hearing, and concluding that claimant voluntarily left work for Walsh Custom Landscape Inc., with good cause and was not disqualified from receiving benefits based on the work separation. On August 20, 2019, ALJ Seideman conducted a separate hearing regarding decision # 200126, and on August 23, 2019, issued Order No. 19-UI-135494, modifying decision # 200126 by reducing the overpayment to \$192 and eliminating both the monetary penalty and penalty disqualification weeks. On September 12, 2019, Order No. 19-UI-135495 became final without an application for review of that order having been filed.¹ On October 17, 2019, ALJ Seideman issued

¹ EAB has taken notice of this fact, which is contained in Employment Department records. 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 fact will remain in the record.

Amended Order 19-UI-138265, replacing Order No. 19-UI-135494 and further modifying decision # 200126 by reducing the amount of the overpayment to \$112.50.²

On November 6, 2019, the Department filed a timely application for review of Order 19-UI-138265 with the Employment Appeals Board (EAB). In its application for review, the Department contested the computation of the overpayment amount, but did not contest the elimination of the monetary penalty and penalty disqualification weeks.

EAB considered the Department's written argument in reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the findings and conclusions regarding that portion of the order under review concluding that claimant is not liable for penalties because he did not willfully make a false statement or misrepresentation or willfully fail to report a material fact to obtain benefits are **adopted**.

FINDINGS OF FACT: (1) On October 24, 2017, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's claim was monetarily valid with a weekly benefit amount of \$192.

(2) On March 28, 2018, claimant worked one day for Walsh Custom Landscape Inc. before suffering an injury, and earned wages of \$160.00 from that employer. Exhibit 2 and Decision # 200126 (Schedule of Adjustments).

(3) Claimant claimed benefits for the week of March 25 through March 31, 2018 (week 13-18). When claimant filed his claim for benefits for that week, he reported no work or earnings.

(4) Based on claimant's false certification to the Department about his work and earnings during week 13-18, the Department paid claimant \$192 in benefits when it would have paid claimant only \$144 in benefits had he accurately reported his work and earnings.

CONCLUSIONS AND REASONS: Claimant is assessed a \$48 overpayment which he is liable to repay to the Department or have deducted from any future benefits otherwise payable to him.

Remuneration and overpayment. Only unemployed individuals are eligible to receive benefits in any week. *See* ORS 657.155(1). An individual is "unemployed" "in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount." ORS 657.100(1).

Order No. 19-UI-138265 concluded that the Department overpaid claimant \$112.50 for week 13-18 based in part on its finding that claimant earned \$180 in wages during that week. Order No. 19-UI-138265 at 4-5. However, the record shows that claimant earned only \$160 during that week.

² It is unclear on what authority the ALJ issued an amended order more than 30 days after Order No. 19-UI-135494 became final.

During week 13-18, claimant earned \$32.00 less than his weekly benefit amount of \$192 from his work for the employer. He therefore was “unemployed” during week 13-18 and eligible for benefits. ORS 657.150(6) provides that “[a]n eligible unemployed individual who has employment in any week shall have the individual’s weekly benefit amount reduced by the amount of earnings paid or payable that exceeds” the greater of ten times the state minimum wage or one-third the individual’s weekly benefit amount. The minimum wage in March 2018 within the Portland Metro area where the employer was based was \$11.25 per hour and ten times \$11.25 is \$112.50.³ One-third of claimant’s weekly benefit amount was \$64.00. \$112.50 is greater than \$64.00. Claimant’s weekly benefit amount therefore must be reduced by the amount of his earnings that exceeded \$112.50.

Claimant earned \$160.00 during week 13-18. \$160.00 minus \$112.50 equals \$47.50. Claimant’s weekly benefit amount must therefore be reduced by \$48.00. Claimant’s weekly benefit amount, \$192.00, minus \$48.00, equals \$144.00. Claimant’s reduced weekly benefit amount was therefore \$144.00. The Department paid claimant \$192.00. Claimant therefore was overpaid \$48.00 for week 13-18.

Repayment. 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 total amount of benefits the Department overpaid to claimant was \$48.00. The Department paid those benefits to claimant because he withheld information about his earnings from employment when he claimed benefits for week 13-18. Information about claimant’s earnings from employment was material to claimant’s eligibility to receive benefits. Regardless of claimant’s knowledge or intent in withholding information about facts material to his claims for benefits, claimant is liable to repay the amount of the overpaid benefits to the Department or have them deducted from future benefits otherwise payable.

DECISION: Order No. 19-UI-138265 is modified, as outlined above.

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

DATE of Service: December 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

³ EAB has taken notice of the minimum wage, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.oregon.gov/boli/WHD/OMW/Pages/Minimum-Wage-Rate-Summary.aspx>. 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 fact will remain in the record.

'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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