

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1144

*Order No. 19-UI-128497 Affirmed
Application for Review Dismissed*

*Order No. 19-UI-140094 Affirmed
Overpayment Assessed*

PROCEDURAL HISTORY: On March 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 75147). Claimant filed a timely request for hearing. On April 11, 2019, ALJ Frank conducted a hearing, at which claimant appeared and testified, and on April 19, 2019, issued Order No. 19-UI-128497, affirming the Department's decision. On May 9, 2019, Order No. 19-UI-128497 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

On August 22, 2019, the Department served notice of another administrative decision concluding claimant was overpaid \$6,384 in benefits, in part because she failed to disclose to the Department the voluntary leaving that was determined in decision # 75147 and Order No. 19-UI-128497 to be without good cause, and therefore was liable to repay that amount to the Department (decision # 143041). On September 11, 2019, decision # 143041 became final without claimant having filed a timely request for hearing. On October 19, 2019, claimant filed a late request for hearing. On October 24, 2019, ALJ Kangas issued Order No. 19-UI-138636, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by November 7, 2019. On November 4, 2019, claimant responded to the questionnaire. On November 5, 2019, the Office of Administrative Hearings (OAH) mailed a letter canceling Order No. 19-UI-138636. On November 7, 2019, OAH mailed notice of a hearing scheduled for November 20, 2019. On November 20, 2019, ALJ Scott conducted a hearing, and on November 21, 2019, issued Order No. 19-UI-140094, allowing claimant's late request for hearing, and affirming decision # 143041. On December 8, 2019, claimant filed a timely application for review of Order No. 19-UI-140094 with EAB.

On December 30, 2019, claimant filed a late application for review of Order No. 19-UI-128497 with EAB.

Based on a *de novo* review of the entire record in these cases, and pursuant to ORS 657.275(2), the portion of Order No. 19-UI-140094 concluding that claimant's late request for hearing was allowed is **adopted**.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-140094 and 19-UI-128497. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-1144 and 2019-EAB-1197, respectively).

FINDINGS OF FACT: (1) On November 7, 2018, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's claim was valid with a weekly benefit amount of \$456.

(2) Thereafter claimant claimed and was paid her full weekly benefit amount for the weeks including November 11 through 17, 2018, and December 9, 2018 through March 9, 2019 (weeks 46-18 and 50-18 through 10-19), the weeks at issue. When claimant claimed benefits for the week including November 11 through November 17, 2018, she failed to disclose that she had quit a job during that week although she had quit a part-time job on November 12, 2018. Based on her claims for that week and the subsequent weeks at issue, the Department paid claimant a total of \$6,384 in benefits.

(3) Subsequently, the Department concluded that claimant was disqualified from receiving benefits because she voluntarily quit a job without good cause on November 12, 2018. As a result, the Department retroactively disqualified claimant from receiving benefits for each of the weeks at issue.

(4) Between April 19, 2019 and November 20, 2019, claimant became aware that Order No. 19-UI-128497 had concluded that she quit work with Sidelines Sports Bar and Grill on November 12, 2018 without good cause. Claimant did not appeal that order because during that time she received "some bad advice on that." Transcript at 14. On November 20, 2019, during a hearing about decision # 143041, both ALJ Scott and the Department's witness suggested that claimant file a late application for review of Order No. 19-UI-128497 with EAB and assert that she had good cause for not appealing that order in a timely manner. Transcript at 35-38.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 19-UI-128497 is dismissed. Claimant was overpaid \$6,384 in benefits that she is liable to repay to the Department or have deducted from any future benefits otherwise payable to her.

Late Application for Review of Order No. 19-UI-128497. The filing date of an application for review filed by fax or electronic means is the date encoded on the application for review received. OAR 471-041-0065(1)(d) and (e) (May 13, 2019). Here, the date encoded on the application for review of Order No. 19-UI-128497 received by one of those means is December 30, 2019, which is the same date on which claimant signed that application for review. December 30, 2019 is therefore the date of filing as specified by administrative rule.

ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than May 9, 2019, 20 days after April 19, 2019, the date of service of Order No. 19-UI-128497. Claimant's application for review was, therefore, late. OAR 471-041-0070 (May 13, 2019) provides:

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the ALJ Order sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

(3) EAB shall dismiss a late application for review unless the applicant includes with the late application for review a written statement describing the circumstances that prevented a timely filing.

Claimant included with her application for review a written statement describing the circumstances that prevented her from timely filing. In that statement, claimant asserted the following:

I'm writing to request an untimely appeal of the ruling made against me on April 19, 2019...I know this ruling was made quite some time ago, but after consulting an acquaintance for legal advice (who used to deal directly with Oregon Unemployment cases) I was told not to appeal this ruling, but rather to appeal the following ruling which would be to collect money from me (which is what I did). When I appealed that ruling, I talked to a very helpful judge, Frances Scott, who informed me that it was really best for me to request an untimely appeal of the original decision made on April 19, 2019 because there was not much she could do on her end in regards to the second appeal. Therefore, here I am...

Claimant's Written Statement at 1.

Both the record herein and claimant's written statement set forth above show that sometime prior to the November 20, 2019 hearing before ALJ Frances Scott, and no later than during that hearing, claimant became aware that Order No. 19-UI-128497 had disqualified her from benefits, and that the order had become final because claimant had not filed a timely application for review. Accordingly, in order for claimant to have filed a late application for review within the seven-day "reasonable time" period after receiving notice and demonstrating that she had failed to file a timely application for review earlier for reasons that constituted good cause, she had to file her late application for review no later than November 27, 2019. However, claimant did not file her application for review until December 30, 2019. Therefore, even assuming that factors or circumstances beyond her reasonable control prevented her timely filing, her late application for review was not filed within a "reasonable time" under OAR 471-041-0070. For that reason, claimant's late application for review must be dismissed.

Overpayment. ORS 657.310(1) states that an individual who is overpaid benefits "because the individual, regardless of the individual's knowledge or intent, made or caused to be made a false

statement or misrepresentation of a material fact, or failed to disclose a material fact” is liable to either repay the benefits or have the overpayment deducted from any future benefits otherwise payable. Where, as here, the Department initially paid benefits to claimant and now seeks to recoup them, the Department has the burden to prove both the amount of the overpayment and that the benefits were paid because claimant was at fault as described in ORS 657.310(1). *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Here, the Department has met its burden. At hearing, there was no dispute that claimant was paid a total of \$6,384 in benefits for the weeks at issue. Exhibit 4. Nor did claimant dispute the Department’s evidence that when she filed her claim for benefits for the week including November 11 through November 17, 2018, she did not report that she had quit a job with Sidelines Sports Bar and Grill on November 12, 2018. Transcript at 23-25. Order No. 19-UI-128947, which became final on May 9, 2019 without a timely application for review having been filed, concluded that when claimant quit that job, she did so without good cause. In this consolidated proceeding, Order No. 19-UI-128947 has become final because claimant’s late application for review of that order has been dismissed.

In sum, the preponderance of the evidence in the record shows that claimant was overpaid \$6,384 in benefits, and because the overpayment resulted, in part, from claimant’s failure to disclose the material fact that she quit a job on November 12, 2018, claimant is liable to either repay those benefits or have the amount of the overpayment deducted from any future benefits otherwise payable to her.

DECISION: The application for review of Order No. 19-UI-128497 filed December 30, 2019 is dismissed. Order No. 19-UI-128497 remains undisturbed. Order No. 19-UI-140094 is affirmed.

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

DATE of Service: January 8, 2020

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

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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