

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1163

Modified
Overpayment; No Penalties

PROCEDURAL HISTORY: On October 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 132942). Based in part on decision # 132942, on October 11, 2019, the Department served notice of a second administrative decision, assessing a \$14,352 overpayment, \$2,152.80 monetary penalty, and 52 penalty weeks (decision # 194049). The employer filed a timely request for hearing on decision # 132942 and decision # 194049. Claimant filed a timely request for hearing on decision # 194049. On October 24, 2019, the Office of Administrative Hearings (OAH) served notice of separate hearings on decisions # 132942 and # 194049, scheduled for November 7, 2019. On November 7, 2019, ALJ Seideman conducted a hearing on decision # 132942, at which claimant failed to appear, and on November 8, 2019, issued Order No. 19-UI-139479 concluding that claimant was discharged for misconduct. Also on November 7, 2019, ALJ Seideman conducted a hearing on decision # 194049, at which the employer failed to appear, and on November 8, 2019, issued Order No. 19-UI-139482, affirming decision # 194049.

On November 11, 2019, claimant filed a request for a new hearing, or in the alternative, a request for review with the Employment Appeals Board (EAB) regarding Order No. 19-UI-139482. EAB considered the request as a request to reopen the hearing. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). Claimant appeared for and participated in the hearing regarding decision # 194049. Therefore, her timely request to reopen that hearing is denied.

Claimant also requested to reopen the hearing regarding the work separation from Techform Advanced Casting and Order No. 19-UI-139479. That matter is not before EAB at this time. As of the time of this order, a hearing in that matter is scheduled for January 16, 2020 regarding claimant's request to reopen, and if the request to reopen is granted, the merits of the work separation case. Therefore, whether claimant is liable for an overpayment, and the amount of the overpayment, may change depending on the outcome of the hearing in that matter.

FINDINGS OF FACT: (1) On April 23, 2019, claimant had a work separation from Techform Advanced Casting (employer) when the employer eliminated claimant's position. Exhibit 6.

(2) On April 24, 2019, claimant filed an initial claim for unemployment insurance benefits establishing a weekly benefit amount of \$624. When claimant filed her initial claim, she reported that she was laid off due to a lack of work with the employer. Based in part on claimant's statement that she was laid off due to a lack of work, the Department initially determined that claimant was entitled to benefits.

(3) Claimant filed weekly claims for benefits for each week during the period of April 21, 2019 through October 5, 2019 (weeks 17-19 through 40-19). Claimant received waiting week credit for week 17-19, and \$624 in benefits for each subsequent week she claimed.

(4) In September 2019, the employer responded to a request for information from the Department, and stated that it had discharged claimant. Exhibit 2. In early October 2019, a Department representative spoke with the employer and claimant and determined that claimant voluntarily left work. Exhibits 5, 6.

CONCLUSIONS AND REASONS: Claimant was overpaid \$14,352 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 here concluded that the Department overpaid claimant \$14,352 in benefits to which she was not entitled based upon Order No. 19-UI-139479, which concluded that claimant was discharged for misconduct from Techform Advanced Casting. Order No. 19-UI-139482 at 3. Because claimant was disqualified from the receipt of benefits by Order No. 19-UI-139479, as a matter of law, claimant was not entitled to receive the waiting week credit and \$14,352 in benefits she received for weeks 17-19 through 40-19. Claimant's statement to the Department that she was laid off due to a lack of work was false as a matter of law, and caused her to receive the \$14,352 in benefits at issue. Regardless of claimant's knowledge or intent, she is liable under ORS 657.310(1) to either repay the \$14,352 in benefits to the Department or have that amount deducted from any future benefits otherwise payable to her under ORS chapter 657.

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 Department has the burden to show that claimant willfully made a false statement or misrepresentation to obtain benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principal, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits). The Department did not meet its burden. The record does not show that claimant misrepresented the nature of her work separation in an effort to obtain benefits.

The order under review concluded that penalties should be imposed, reasoning as follows:

Claimant argues that she didn't realize she was doing something wrong. However, she knew that she had refused the change of her position and was discharged because of poor performance. It is appropriate to note that she also received a large severance package.

Order No. 19-UI-139482 at 4. The record does not support the reasoning in the order under review.

The record does not show that claimant knew or should have known she was discharged, or knew how to define the nature of her work separation for the purpose of claiming unemployment insurance benefits. The nature of the work separation was ambiguous at best. The Department found that it was a voluntary quit in decision # 132942. The employer stated that it was a discharge. Exhibit 5. Order No. 19-UI-139479 concluded that it was a discharge. Nor does the record show that claimant "refused the change of her position" at the time of the work separation. Claimant testified that the employer did not offer claimant another position at the time her employment ended, and the Department's representative testified that the employer did *not* say it had offered claimant a different position at the time of the separation. Audio Record at 24:17 to 25:23, 19:17 to 21:09. The record shows claimant understood her employment ended because her "position was eliminated," which may logically, plausibly equate to a "lack of work." Exhibit 6. That claimant received a severance package does not show that claimant knew or should have known whether she was discharged, laid off, or that she quit.

The Department asserted at hearing that claimant knew that certifying that she was laid off due to a lack of work would result in an immediate payment of benefits, and on that basis, the Department determined that claimant intentionally misreported the nature of her work separation to obtain benefits. Audio Record at 18:41 to 19:07. The Department asserted that claimant knew she would receive immediate benefits based on information provided in the benefits handbook. Audio Record at 22:17 to 23:25. The Department's assertions are speculative at best and do not show by a preponderance of the evidence that claimant made a willful misrepresentation to obtain benefits. Claimant testified plausibly and credibly that she did not willfully misrepresent her work separation to obtain benefits. Audio Record at 25:52 to 27:26. The record does not show otherwise.

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

DECISION: Order No. 19-UI-139482 is modified, as outlined above. Claimant is liable only to repay a \$14,352 overpayment or have that amount deducted from future benefits otherwise payable.¹

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

DATE of Service: January 2, 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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¹ Whether claimant is liable for an overpayment may change depending on the outcome of future adjudication of decision # 132942. A hearing is set for January 16, 2020 in that matter.



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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