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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1196

Modified
\$1,936 Overpayment Assessed
Penalties Reduced

PROCEDURAL HISTORY: On May 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$968 overpayment, a \$193.60 monetary penalty, and 11 penalty weeks (decision # 202978). Decision # 202978 stated that to be timely, any appeal from the decision had to be filed on or before June 6, 2019.

On June 3, 2019, the Department served notice of another administrative decision amending decision # 202978 and concluding claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$1,936 overpayment, \$387.20 monetary penalty, and 17 penalty weeks (decision # 195379). Decision # 195379 notified claimant that to be timely, an appeal of decision #195379 had to be filed by June 24, 2019.

On or about June 24, 2019, claimant filed a request for hearing of decision # 195379 by mail. DR Exhibit 2. On July 11, 2019, ALJ Kangas interpreted claimant's request for hearing on decision # 195379 as a late request for hearing on decision # 202978, and issued Order No. 19-UI-133158 dismissing the request for hearing as late, subject to claimant's right to renew his request by responding to an appellant questionnaire by July 25, 2019. On October 7, 2019, claimant responded to the appellant questionnaire.

On November 13, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 2, 2019 to consider both the timeliness of claimant's request for hearing and, if

the request for hearing was allowed, the merits of decision # 202978.¹ On December 2, 2019, ALJ S. Lee conducted a hearing, and on December 10, 2019 issued Order No. 19-UI-140957 allowing claimant's June 24, 2019 request for hearing as a timely hearing request on decision # 195379, concluding that claimant willfully failed to report material facts to obtain benefits, and assessing a \$1,936 overpayment, 17 penalty weeks and a monetary penalty.²

On December 26, 2019, claimant filed an application for review of Order No. 19-UI-140957 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant's request for hearing was filed in a timely manner is **adopted**.

FINDINGS OF FACT: (1) On March 16, 2018, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's weekly benefit amount at \$484. The maximum weekly benefit amount in effect at the time was \$590.³

(2) Claimant claimed and was paid \$484 in benefits for each of the weeks including March 25 through April 21, 2018 (weeks 13-18 through 16-18), the weeks at issue.

(3) Shortly after March 16, 2018, claimant attended an initial interview for potential employment with Universal Protection Service. He completed the "hiring paperwork" as instructed and was told he would have to attend a second interview at the jobsite to be hired. Transcript at 29. Shortly thereafter, claimant attended a second interview at the jobsite, but was told at that time that he "wasn't selected for the position," and "never worked for them." Transcript at 29.

(4) Universal Protection Service later reported to the Department that claimant had quit a job with that employer on March 27, 2018. When claimant claimed benefits for the week of March 25 through March 31, 2018 (week 13-18), when asked if during that week if he had "quit a job" or "refuse[d] an offer of work" with any employer, claimant did not respond that he had. Transcript at 25-26, 35-36. If claimant had responded "yes" to either of those questions, benefits would not have been paid for that week and until the work separation had been investigated. Transcript at 35-36.

¹ It is unclear on what authority OAH essentially canceled Order No. 19-UI-133158 and served a new notice of hearing on November 13, 2019. Claimant did not respond to the appellant questionnaire by July 25, 2019, as required by Order No. 19-UI-133158 and OAH jurisdiction over that order expired on that date. There is nothing in the record explaining OAH's decision to issue a new notice of hearing on November 13, 2019. Nonetheless, EAB has accepted review of Order No. 19-UI-140957, including that portion of the order that allowed claimant's request for hearing.

² Order No. 19-UI-140957 is unclear as to amount of the monetary penalty it assessed.

³ EAB has taken notice of this fact, which is contained in Employment Department records and which show that the maximum benefit amount in effect during the weeks at issue was \$590. OAR 471-041-0090(1) (May 13, 2019). 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.

(5) During the week of April 8 through April 14, 2018, Cedar Hills Hospital hired claimant as an employee and told him that he had to do “a week of orientation” that would be “unpaid” but that after the orientation, he would start getting paid. Transcript at 29-30. Claimant attended 40 hours of orientation that week, but at the end of the orientation, the employer told him that his work hours would be 9:00 a.m. to 5:00 p.m. rather than 6:00 a.m. to 2:00 p.m. as he was originally told. At that time, claimant told the employer that he could not work those hours due to the “traffic” around those later hours between Beaverton and Fairview, Oregon where he lived. Transcript at 30. Although claimant offered to work the 6:00 a.m. to 2:00 p.m. shift, the employer told him to either work the 9:00 a.m. to 5:00 p.m. shift, or “don’t show up.” Transcript at 30. On April 12, 2018, claimant did not show up for work as scheduled.

(6) Cedar Hills Hospital later reported to the Department that claimant had quit a job with that employer on April 12, 2018, and that it had paid claimant \$526.96 for his services. Claimant “never received” those earnings, and after he received decision # 195379, he contacted Cedar Hills Hospital to investigate why he had not been paid the earnings the employer had reported to the Department, but never received a response. Transcript at 29. When claimant claimed benefits for the week of April 8 through April 14, 2018 (week 15-18), and was asked if during that week if he had “quit a job” or “refuse[d] an offer of work” with any employer, claimant did not respond that he had, although he later admitted that he “should have.” Transcript at 25-26, 35-36, 38. If claimant had responded “yes” to either of those questions, benefits would not have been paid for that week and until the work separation had been investigated. Transcript at 35-36.

(7) On May 13, 2019, the Department served notice of an administrative decision concluding claimant voluntarily quit work with Cedar Hills Hospital without good cause on April 12, 2018 (decision #101458). On June 3, 2019, decision # 101458 became final without claimant having filed a timely request for hearing.

(8) On May 31, 2019, the Department served notice of an administrative decision concluding claimant voluntarily quit work with Universal Protection Service without good cause on March 27, 2018 (decision #104030). On June 20, 2019, decision # 104030 became final without claimant having filed a timely request for hearing.

(9) Claimant did not have an unemployment insurance claim prior to this claim.

CONCLUSION AND REASONS: Claimant is assessed a \$1,936 overpayment and a \$145.20 monetary penalty, both of which he is liable to repay to the Department or to have deducted from future benefits otherwise payable to him. Claimant is also assessed 7 weeks as a penalty disqualification from future benefits otherwise payable to him.

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 Department's administrative decision # 104030, which concluded that claimant voluntarily quit work with Universal Protection Service without good cause on March 27, 2018 and was disqualified from benefits effective March 25, 2018 until he requalified for benefits, is final as a matter of law because that decision was not timely appealed. The Department paid claimant \$484 in benefits each week from March 25, 2018 through April 21, 2018 (weeks 13-18 through 16-18), for a total of \$1,936 in benefits. Because claimant was disqualified from receiving those benefits for those weeks, he was overpaid. The overpayment occurred because when claimant claimed benefits for the week including March 25 through March 31, 2018, he falsely indicated to the Department that he had not quit a job that week. That was false as a matter of law because decision # 104030 is final. Because claimant's overpayment was caused by his false statement and failure to disclose a material fact about his employment with Universal Protection Service, claimant is liable to repay the overpayment of \$1,936 or have it deducted from any future benefits otherwise payable to him.

The Department's administrative decision # 101458, which concluded that claimant voluntarily quit work with Cedar Hills Hospital without good cause on April 12, 2018 and was disqualified from benefits effective April 8, 2018, also is final as a matter of law because that decision was not timely appealed. The Department paid claimant \$484 in benefits each week from April 8, 2018 through April 21, 2018 (weeks 15-18 through 16-18), for a total of \$968. Because claimant was disqualified from receiving those benefits for those weeks based on decision # 101458, he was overpaid. The overpayment occurred because when claimant claimed benefits for the week including April 8 through April 14, 2018, he falsely indicated to the Department that he had not quit a job that week. That was false as a matter of law because decision # 101458 is final. Because claimant's overpayment was caused by his false statement and failure to disclose a material fact about his employment with Cedar Hills Hospital, claimant is liable to repay the overpayment of \$968 or have it deducted from any future benefits otherwise payable to him.⁴

Order No. 19-UI-140957 concluded that claimant was overpaid benefits in the total amount of \$1,936 for the reasons stated and the record supports that conclusion. Order No. 19-UI-140957 at 7, 9.

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).

At hearing, the Department asserted that claimant willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits three separate times, including when he failed to report his work separation from Universal Protection Service, his work separation from Cedar Hills Hospital, and his earnings from Cedar Hills Hospital. Transcript at 25-26. Order No. 19-UI-140957 concluded that claimant willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits only twice, including when he failed to report both his remuneration and his work separation from Cedar Hills Hospital. Order No. 19-UI-140957 at 2, 8. However, while the order's conclusion that claimant willfully failed to report his work separation from

⁴ The \$968 overpayment described is not in addition to the \$1,936 overpayment caused by claimant's failure to report his work separation from Universal Protection Service. It is the amount of the total \$1,936 overpayment claimant *also* was overpaid for failing to report his work separation from Cedar Hills Hospital.

Cedar Hills Hospital to obtain benefits is supported by the record, its conclusion that he willfully failed to report his remuneration from Cedar Hills Hospital is not.

The record shows that when claimant initially was interviewed by Universal Protection Service, he was told that he would be notified at a second interview if he was hired and that at that second interview claimant was told that he “wasn’t selected.” Transcript at 29. Claimant explained that he consequently believed that he had never been hired by Universal Protection Service. Transcript at 29. Claimant’s explanation was plausible and the evidence as a whole on that issue does not support a finding that claimant willfully failed to report that work separation to obtain benefits.

The record also shows that claimant believed he had been “hired” by Cedar Hills Hospital to work a 6:00 a.m. to 2:00 p.m. shift and that only after his full week of orientation had concluded, did he learn that his shift had been changed to 9:00 a.m. to 5:00 p.m., which he then failed to “show up” for to begin his job during week 15-18. Transcript at 30. Claimant’s admission at hearing that he “should have reported” that he had quit a job during that week when requesting benefits for that week but did not because it “didn’t really seem very fair” can reasonably be interpreted as an admission that he willfully failed to report that work separation in order to obtain benefits. Transcript at 35, 38.

Finally, the record shows that claimant never received the \$526.96 in earnings Cedar Hills Hospital reported to the Department that it had paid claimant following his voluntary quit on April 12, 2018. Claimant asserted, and the Department did not dispute, that after he received the overpayment decision that described that purported payment from the employer, claimant contacted the employer more than once to question them about not receiving those wages, but he never received a response to his voicemails. Transcript at 33-34. On that evidence, claimant’s explanation that he never received the reported wages from Cedar Hills Hospital was plausible and does not support a finding that claimant willfully failed to report those earnings to obtain benefits.

Accordingly, record as a whole shows that claimant willfully made a single false statement or misrepresentation, or willfully failed to report a single material fact to obtain benefits.

Penalties. The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052 (January 11, 2018), which provide that when the disqualifying acts under ORS 657.215 relate to the provisions of 657.176 (including those concerning work separations), the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying acts 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 acts, rounding off to the nearest two decimal places, multiplying the result by four and then rounding it up to the nearest whole number, or four weeks, whichever is greater. OAR 471-030-0052(1)(b). Here, claimant’s overpayment attributable to his willful failure to report his work separation from Cedar Hills Hospital on April 12, 2018 was \$968 (weeks 15-18 and 16-18), which, divided by \$590 and rounded off to the nearest two decimal places, is 1.64 ($968/590 = 1.6406$). Multiplying 1.64 by four (6.56) and rounding up to the nearest whole number is 7. Claimant’s penalty disqualification period therefore totals 7 weeks.

The amount of the monetary penalty is also determined by applying the provisions of OAR 471-030-0052, which provide, in pertinent part:

The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be . . . for the first or second occurrence within 5 years of the occurrence for which a penalty is being assessed, 15 percent of the total amount of benefits the individual received but to which the individual was not entitled.

OAR 471-030-0052(7), OAR 471-030-0052(7)(a). Claimant made a single willful misrepresentation, when he failed to report that he quit a job with Cedar Hills Hospital during week 15-18. Claimant therefore is liable for a penalty equal to 15% of the \$968 overpayment attributable to that misrepresentation. Fifteen percent of \$968 is \$145.20.

Conclusion. Claimant was overpaid \$1,936 in benefits and, as a result of willfully failing to report a single material fact to obtain benefits, he is liable for a \$145.20 monetary penalty, and 7 penalty weeks.

DECISION: Order No. 19-UI-140957 is modified, as outlined above.

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

DATE of Service: January 30, 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

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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