

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0138**

*Modified*  
*\$6,816 Overpayment Assessed*  
*No Monetary Penalty or Penalty Weeks*

**PROCEDURAL HISTORY:** On November 13, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$6,816 overpayment, a \$2,044.80 monetary penalty, and 44 penalty weeks (decision # 195983). Claimant filed a timely request for hearing. On January 22, 2020, ALJ Snyder conducted a hearing and on January 30, 2020, issued Order No. 20-UI-143599 affirming the Department's decision. On February 17, 2020, claimant filed an application for review of Order No. 20-UI-143599 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On March 20, 2019, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's weekly benefit amount at \$624.

(2) Alliance Solutions Group, a staffing agency, employed claimant as a production worker for one of its clients beginning June 11, 2019. On or about July 4, 2019, claimant experienced an off-the-job injury, which claimant suspected was a hernia. He continued to work for the employer's client for a time but on or about July 18, 2019, went to a doctor in Springfield, OR to be examined. Following the examination, the doctor told claimant that he could return to work but with a lifting restriction of 10 pounds. That day, claimant notified the employer of his off-the-job injury and lifting restriction. The employer client for which claimant had been working had no modified duty work available and so claimant was unable to return to work.

(3) The following week, claimant sought and received a second opinion from a physician in Portland, OR. That physician verbally released him to return to work with no restrictions, but claimant failed to request or receive a written return to work authorization. When claimant notified the employer that he had been released to return to work with no restrictions, the employer requested a written medical authorization to verify claimant's report. After claimant returned to the Portland physician on August 30, 2019, the physician prepared a written return to work authorization with no restrictions dated that day.

(4) The employer received the August 30 return to work authorization on September 23, 2019. On September 24, 2019, the employer offered claimant a job with one of its staffing clients. Claimant turned that job offer down because it paid several dollars per hour less than his previous job and did not think he could afford the cut in pay.

(5) Claimant claimed and was paid benefits for each of the weeks including July 14 through August 3 and August 11 through October 5, 2019 (weeks 29-19 through 31-19 and 33-19 through 40-19), the weeks at issue. When claimant claimed benefits for each of those weeks, he certified to the Department as true that he was able to work and available for work during the week claimed. He made those certifications because he believed that he remained able and available to perform production work, first with his 10 pound lifting restriction and then with his verbal release to return to work without any restriction. When claimant claimed benefits for the week including September 22 through September 28, 2019 (week 39-19), claimant certified to the Department as true that he had not refused an offer of work during that week. When claimant made that certification, claimant did not consider whether not reporting his job refusal might affect his eligibility to receive benefits. Based on claimant's reports and certifications to the Department for the weeks at issue, claimant received a total of \$6,816 in regular benefits. Exhibit 1 at 22 and 23.

(6) On November 6, 2019, the Department issued an administrative decision that concluded that claimant was not able to work, and therefore ineligible for benefits, during the weeks including July 14 through September 21, 2019 (weeks 29-19 through 38-19) (decision # 102054). On November 26, 2019, decision # 102054 became final, as a matter of law, without claimant having filed a timely request for hearing.

(7) On November 6, 2019, the Department served notice of another administrative decision concluding claimant was disqualified from receiving benefits, effective September 22, 2019 (week 39-19) and until he requalified under Oregon law, because he failed without good cause to accept an offer of suitable work on September 24, 2019 (decision # 112335). On November 26, 2019, decision # 112335 became final, as a matter of law, without claimant having filed a timely request for hearing.

**CONCLUSIONS AND REASONS:** Claimant is assessed a \$6,816 overpayment which he is liable to repay to the Department or have deducted from future benefits otherwise payable to him. Claimant is not subject to a monetary penalty or penalty weeks.

**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. *Id.*

Decision # 102054, which claimant did not timely appeal and became final, concluded that claimant was not able to work during the weeks including July 14 through September 21, 2019 (weeks 29-19 through 38-19) and therefore was ineligible to receive benefits for those weeks. Therefore, as a matter of law, claimant was not entitled to the \$5,568 in regular benefits he received for those weeks. Exhibit 1 at 23. Claimant's certifications to the Department that he was able to work during those weeks also were false

as a matter of law, and caused him to receive the \$5,568 in regular benefits he received for those weeks. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310(1) to either repay the \$5,568 in regular benefits he received for weeks 29-19 through 38-19 to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

Decision # 112335, which claimant also did not timely appeal and became final, concluded that claimant was disqualified from receiving benefits effective the week beginning September 22, 2019 (week 39-19) and until requalified under Oregon law because he failed without good cause to accept an offer of suitable work on September 24, 2019. Therefore, as a matter of law, claimant was not entitled to the \$1,248 in regular benefits he received for weeks 39-19 and 40-19. Exhibit 1 at 23. Claimant's certification to the Department when filing his claim for benefits for week 39-19 that he had not refused an offer of work that week also was false as a matter of law, and caused him to receive the \$1,248 in regular benefits he received for those weeks. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310 (1) to either repay the \$1,248 in regular benefits he received for week 39-19 and 40-19 to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

In sum, claimant is assessed a \$6,816 overpayment which he is liable to repay to the Department or to have deducted from future benefits otherwise payable to him.

**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).

Order No. 20-UI-143599 concluded, in part, that claimant "willfully" misrepresented his ability to work when claiming benefits for each of the weeks at issue and "willfully" failed to disclose that he had refused an offer of work on September 24, 2019 when claiming benefits for week 39-19 and for those reasons was subject to a monetary penalty and penalty weeks. Order No. 20-UI-143599 at 5-6. However, the order failed to find, conclude or even discuss whether claimant willfully made a false statements or misrepresentations, or willfully failed to report material facts "to obtain benefits."

Here, because the Department originally paid claimant benefits it subsequently denied, the Department had the burden to establish by a preponderance of the evidence that claimant was subject to penalties because he willfully made false statements or misrepresentations to obtain those benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). However, the record fails to show the Department met its burden of proof on that issue.

When claimant claimed benefits for week 29-19, although he had received a work restriction of no lifting over 10 pounds from the Springfield doctor, he believed that he remained able to perform the production work that he was seeking. Transcript at 19-20. The following week, before claimant claimed benefits for weeks 30-19 through 38-19, he received a second opinion from the Portland doctor who verbally released him to return to work with no restrictions. On those undisputed facts, it was not unreasonable for claimant to sincerely believe, when filing his claims for benefits for weeks 29-19 through 38-19, that he was able to work. The record fails to show that the Department presented any

evidence that claimant did not sincerely hold that belief, and that when he filed his claims for benefits for those weeks, he misrepresented his ability to work “to obtain benefits.”

When claimant claimed benefits for week 39-19, although he had refused a job offer during that week, he reported to the Department that he had not refused a job offer during the week. At hearing, after claimant admitted that he had refused a job offer during the week and reported to the Department that he had not, the ALJ asked the following question and claimant gave the following answer:

ALJ: [D]id you think it could have affected your ability to receive benefits if you reported that you had turned down an offer of work?

A: No, I didn't even - I didn't even think about that...because the job wasn't even...on my radar, you know. So I didn't...[consider]... I might not get benefits or not. I mean I cut myself off of benefits. I stopped - I stopped claiming. So that wasn't the case at all.

Transcript at 27-28. The record fails to show that the Department presented any direct or circumstantial evidence that disputed claimant’s account of his state of mind when he filed his claim for benefits or which tended to show that claimant had to have been aware that the job refusal could disqualify him. For example, it failed to present evidence regarding whether or not claimant had any prior experience as a claimant with job refusals and failed to refer to any passage in the claimant handbook which may have addressed the issue and then ask claimant if he had read it. Accordingly, the Department failed to meet its burden to show that claimant willfully failed to report that he had refused job offer during week 39-19 “to obtain benefits.”

In sum, claimant is not subject to a penalty disqualification period or a monetary penalty.

**DECISION:** Order No. 20-UI-143599 is modified, as outlined above.

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

**DATE of Service:** March 26, 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](https://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 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 الاستئناف 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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