

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0166**

*Affirmed*  
*\$1,992 Overpayment Assessed*  
*Repayment by Deduction From Future Benefits Only*

**PROCEDURAL HISTORY:** On January 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,992 overpayment (decision # 153025). Claimant filed a timely request for hearing. On February 12, 2020, ALJ Wyatt conducted a hearing, and on February 18, 2020, issued Order No. 20-UI-144672, affirming the Department's decision. On February 21, 2020, claimant filed an application for review of Order No. 20-UI-144672 with the Employment Appeals Board (EAB).

With her application for review, claimant filed a written argument. However, claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). Accordingly, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) On August 23, 2019, claimant filed an initial claim for unemployment insurance benefits.<sup>1</sup> The Department determined that claimant's claim was monetarily valid with a weekly benefit amount of \$332. Claimant filed weekly claims for each of the weeks including September 1 through September 21, 2019, and October 6 through October 26, 2019 (weeks 36-19 through 38-19 and 41-19 through 43-19), the weeks at issue. The Department initially did not pay claimant benefits for the weeks at issue.

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<sup>1</sup> We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of their objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(2) On September 13, 2019, the Department served notice of an administrative decision concluding the employer discharged claimant for committing a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy and was disqualified from receiving benefits effective August 18, 2019 (decision # 140717). Claimant appealed that decision, and on October 17, 2019, the Office of Administrative Hearings (OAH) issued Order No. 19-UI-138312, concluding the employer discharged claimant, but not for committing a disqualifying act. Based on the issuance of Order No. 19-UI-138312, the Department paid claimant \$1,992 in benefits for the weeks at issue.

(3) The employer filed an application for review of Order No. 19-UI-138312 with EAB. On December 4, 2019, EAB issued Appeals Board Decision 2019-EAB-1037, setting aside Order No. 19-UI-138312 and concluding claimant was disqualified from receiving benefits, effective August 18, 2019, because she had committed a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy. On January 3, 2020, Appeals Board Decision 2019-EAB-1037 became final, as a matter of law, without a Petition for Judicial Review having been filed with the Oregon Court of Appeals.

**CONCLUSIONS AND REASONS:** Claimant was overpaid \$1,992.00 in benefits and is liable to have the overpayment deducted from future benefits otherwise payable.

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). ORS 657.315(1) provides, however, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter or the equivalent law of another state for any week or weeks within 5 years following the week in which the decision establishing the erroneous payment became final.

The record establishes that claimant was overpaid benefits as a matter of law because Appeals Board Decision 2019-EAB-1037, which reversed Order No. 19-UI-138312, became final without a Petition for Judicial Review having been filed with the Oregon Court of Appeals. Claimant was overpaid benefits because of an error not caused by a false statement, misrepresentation of a material fact or failure to disclose a material fact on her part, but because an initial decision to pay benefits was subsequently reversed by a decision finding that claimant was not eligible for the benefits received. Accordingly, ORS 657.315 applies to this case. Under that statute, claimant was overpaid \$1,992, but claimant is not liable to repay that amount to the Department. Instead, claimant is liable only to have the \$1,992 in benefits deducted from future benefits otherwise payable to claimant within the five years following the week in which the decision establishing the erroneous payment becomes final.

**DECISION:** Order No. 20-UI-144672 is affirmed.

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

**DATE of Service: March 27, 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](http://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 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**

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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