

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0172**

*Modified*  
*\$1,539 Overpayment Assessed*  
*No Monetary Penalty or Penalty Weeks*

**PROCEDURAL HISTORY:** On December 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause on May 10, 2019 and was disqualified from receiving benefits, effective May 5, 2019 (week 19-19) (decision # 94748). Claimant filed a timely request for hearing. On January 17, 2020, the Office of Administrative Hearings (OAH) served claimant notice of a hearing scheduled for January 31, 2020 at 9:30 a.m. On January 31, 2020, claimant failed to appear at the hearing, and ALJ Monroe issued Amended Order No. 20-UI-143669, dismissing claimant's request for hearing for failure to appear. On March 2, 2020, claimant filed a late request to reopen the hearing. On March 10, 2020, ALJ Kangas issued Order No. 20-UI-145904, denying claimant's request to reopen. On March 30, 2020, Order No. 20-UI-145904 became final, leaving decision # 94748 undisturbed and final as a matter of law.

On December 12, 2019, the Department also served notice of two other administrative decisions. One concluded that claimant was not able to work during the week of June 9 through 15, 2019 (week 24-19) and was not eligible for benefits for that week (decision # 110045). The other concluded that claimant was not able to work during the week of July 7 through 13, 2019 (week 28-19) and was not eligible for benefits for that week (decision # 105444). Claimant filed a timely request for hearing on both decisions. On January 17, 2020, OAH served claimant notice of a hearing on both decisions scheduled for January 31, 2020 at 8:15 a.m. On January 31, 2020, claimant failed to appear at the hearing, and ALJ Monroe issued Amended Orders No. 20-UI-143673 and 20-UI-143670, dismissing claimant's request for hearing on decisions # 110045 and 105444 for failure to appear. On March 2, 2020, claimant filed a request to reopen the hearing. On March 10, 2020, ALJ Kangas issued Orders No. 20-UI-145902 and 20-UI-145903, denying claimant's request to reopen. On March 30, 2020, Orders No. 20-UI-145902 and 20-

UI-145903 became final, leaving decisions # 110045 and 105444 undisturbed and final as a matter of law.

On December 13, 2019, the Department served notice of an administrative decision, based on decisions # 94748, 110045 and 105444, concluding claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$1,539 overpayment, a \$461.70 monetary penalty and 14 penalty weeks (decision # 193540). Claimant filed a timely request for hearing. On January 17, 2020, OAH served claimant notice of a hearing scheduled for January 31, 2020 at 10:45 a.m. On January 31, 2020, ALJ Monroe conducted the hearing, at which claimant appeared, and on February 12, 2020 issued Order No. 20-UI-144328, affirming decision # 193540. On February 25, 2020, claimant filed an application for review of Order No. 20-UI-144328 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On December 1, 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 \$171. Claimant claimed and received \$171 in benefits for the weeks from May 5 through June 22, 2019 and June 30 through July 13, 2019 (weeks 19-19 through 25-19 and 27-19 through 28-19), the weeks at issue. When claiming benefits for those weeks, claimant certified that his answers to the claims questions he was asked were true. Exhibit 1 at 41-42.

(2) Northwest Industrial Staffing (NIS) and Express Employment Professionals (EEP), temporary staffing agencies, employed claimant for temporary assignments during the weeks at issue.

(3) On May 10, 2019, claimant was assigned to work an 8-hour shift for NIS. Before the shift started, claimant called in to NIS to report that he had to go to the hospital to get some medication before work, but that he could work thereafter. The employer said "okay," but when claimant returned from the hospital, the employer told claimant "they decided to move on from you." Transcript at 26. Claimant did not believe that he had quit a job that day because the employer had ended the assignment. Transcript at 24.

(4) On June 11, 2019, claimant was scheduled to work at an assignment for EEP, but called in sick that day and did not work.

(5) On July 8, 2019, claimant was scheduled to work at an assignment for EEP, but called in sick that day and did not work.

(6) When claimant claimed benefits for the week of May 5 through May 11, 2019 (week 19-19), he reported \$0 in earnings. Based on information received from NIS, the Department determined that claimant earned \$112.00 during that week. When asked whether he had "quit a job" that week, claimant responded "No," because did not believe that he had. Transcript at 32.

(7) When claimant claimed benefits for the week of May 12 through May 18, 2019 (week 20-19), he reported \$0 in earnings. Based on information received from NIS, the Department determined that claimant earned \$288.00 during that week.

(8) When claimant claimed benefits for the week of May 26 through June 1, 2019 (week 22-19), he reported \$0 in earnings. Based on information received from EEP, the Department determined that claimant earned \$121.20 during that week.

(9) When claimant claimed benefits for the week of June 2 through June 8, 2019 (week 23-19), he reported \$0 in earnings. Based on information received from EEP, the Department determined that claimant earned \$48.00 during that week.

(10) When claimant claimed benefits for the week of June 9 through June 15, 2019 (week 24-19), he reported \$0 in earnings. Based on information received from EEP, the Department determined that claimant earned \$48.00 during that week. When asked "Did you fail to accept an offer of work last week?" claimant responded, "No," because he did not believe that he had, and was unaware that missing a work opportunity due to illness could affect his eligibility for benefits. Exhibit 1 at 40-41 of 42; Transcript at 33.

(11) When claimant claimed benefits for the week of June 30 through July 6, 2019 (week 27-19), he reported \$0 in earnings. Based on information received from EEP, the Department determined that claimant earned \$253.50 during that week.

(12) When claimant claimed benefits for the week of July 7 through July 13, 2019 (week 28-19) he reported \$0 in earnings. Based on information received from EEP, the Department determined that claimant earned \$149.50 during that week. When asked "Did you fail to accept an offer of work last week?" claimant responded, "No," because he did not believe that he had, and was unaware that missing a work opportunity due to illness could affect his eligibility for benefits. Exhibit 1 at 40-41 of 42; Transcript at 33.

**CONCLUSIONS AND REASONS:** Claimant is assessed a \$1,539 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 # 94748, which has become final, concluded that claimant quit work without good cause on May 10, 2019 and was disqualified from receiving benefits, effective May 5, 2019 (week 19-19) (decision # 94748). Therefore, as a matter of law, claimant was not entitled to the \$1,539 in regular benefits he received for the weeks at issue. Claimant's certifications to the Department that he had not quit a job during week 19-19 also was false as a matter of law, and caused him to receive the \$1,539 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 \$1,539 in regular benefits he received for weeks 19-19 through 28-19 to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

Decisions # 110045 and 105444, which have also become final, concluded that claimant was ineligible from receiving benefits for weeks 24-19 and 28-19 because he was not able to work during each day of those weeks. Therefore, as a matter of law, claimant was not entitled to the \$342 in regular benefits he received for weeks 24-19 and 28-19 (\$171 x 2). Claimant's certification to the Department when filing his claim for benefits for each of those weeks that he was capable of accepting and reporting for work each day of those weeks also was false as a matter of law, and caused him to receive the \$342 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 \$342 in regular benefits he received for weeks 24-19 and 28-19 to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657. The \$342 overpayment based on decisions # 110045 and 105444 is part of and included within the \$1,539 overpayment that was based on decision # 94748.

In sum, claimant is assessed a \$1,539 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-144328 concluded, in part, that claimant made willful misrepresentations and failed to report material facts to obtain benefits when he filed his weekly claims for benefits, and for those reasons was subject to a monetary penalty and penalty weeks. Order No. 20-UI-144328 at 6-7. However, the order failed to address claimant's mental state when answering the relevant claims questions, and the earnings basis for a penalty is speculative. 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 19-19, although he had missed a day of work on May 10 due to his need to go to the hospital for some medication early in the day, he did not think that he had quit a job that week. The record shows that on May 10, the employer had consented to claimant going to the hospital and, after he returned from the hospital and attempted to return to work, the employer told him "they decided to move on from you," and had ended the assignment. Transcript at 24. On those undisputed facts, the Department failed to show that by failing to report that he had quit a job that week when filing his claim for benefits, claimant willfully failed to report a material fact to obtain benefits.

When claimant claimed benefits for weeks 24-19 and 28-19, although he had called in sick one day during each of those weeks, he reported to the Department that he had not failed to accept an offer of work during the week. At hearing, after claimant admitted that he did not recall if he had called in sick during those weeks, the ALJ asked claimant the following question, and claimant gave the following answer:

ALJ: [D]id you understand that for a week that you...claim benefits, if there's a missed work opportunity... or [you're] scheduled to work and aren't able to work because of illness, that that may affect your...eligibility for benefits?

A: No.

Transcript at 33. The Department did not present any direct or circumstantial evidence that disputed claimant's account of his state of mind when he filed his claims for benefits, or which tended to show that claimant had to have been aware that calling in sick would have negatively affected his eligibility. For example, it failed to present evidence regarding whether or not claimant had any prior experience claiming benefits when sick, and failed to refer to any passage in the claimant handbook which may have addressed the issue and 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 missed a day or work due to illness during weeks 24-19 and 28-19 "to obtain benefits."

When claimant claimed benefits for weeks 19-19 to 20-19, 22-19 to 24-19 and 27-19 to 28-19, he did not report working any hours or earning any wages. The wages the Department reported claimant earned during weeks 21-19 through 28-19 was based on information received from EEP and was speculative because that information showed that the days of the week over which claimant earned the wages in question was not Sunday to Saturday, but Monday to Sunday. And with regard to the wages reported by both NIS and EEP claimant asserted to the Department, "if I didn't report, I didn't work" and claimant similarly testified at hearing that he only claimed when he "wasn't working." Transcript at 20. Even if claimant was mistaken regarding some of the weeks, the Department failed to show that he acted with fraudulent intent when he filed his claims. Transcript at 20. For all these reasons, the Department failed to meet its burden to show that claimant willfully failed to report his hours and earnings "to obtain benefits."

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

**DECISION:** Order No. 20-UI-144328 is modified, as outlined above.

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

**DATE of Service:** April 3, 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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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