

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0223

Order No. 20-UI-145166 Affirmed – Late Request for Hearing Dismissed
Order No. 20-UI-145162 Modified – Overpayment Deduction Only

PROCEDURAL HISTORY: On August 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work beginning May 25, 2019 through June 22, 2019, and was therefore not eligible to receive unemployment insurance benefits for that period (decision # 92906). On August 21, 2019, decision # 92906 became final without claimant having filed a request for hearing. On November 15, 2019, the Department served notice of another administrative decision, based on decision # 92906, concluding claimant was overpaid \$927 in benefits, which she was required to repay (decision # 154958). On December 5, 2019, claimant filed a late request for hearing on decision # 92906 and a timely request for hearing on decision # 154958. On February 4, 2020, the Office of Administrative Hearings (OAH) served two notices of hearings scheduled for February 18, 2020, at 9:30 a.m. and 10:45 a.m. On February 18, 2010, ALJ Snyder conducted the two hearings, and on February 26, 2020 issued Order No. 20-UI-145166, dismissing claimant's late request for hearing on decision # 92906, and Order No. 20-UI-145162 affirming the Department's decision # 154958.

On March 11, 2020, claimant filed a timely application for review of both orders with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 20-UI-145166 and 20-UI-145162. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0225 and 2020-EAB-0223).

LATE REQUEST FOR HEARING

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 20-UI-145166, which dismissed claimant's late request for hearing, is **adopted**.

OVERPAYMENT

FINDINGS OF FACT: (1) Claimant filed weekly claims for benefits for May 26, 2019 through June 15, 2019 (weeks 22-19 through 24-19), the weeks at issue. The Department paid claimant \$927 in benefits for those weeks.

(2) On August 1, 2019, the Employment Department issued an administrative decision concluding claimant was not able to work beginning May 25, 2019 through June 22, 2019 (weeks 22-19 through 24-19), and was therefore not eligible to receive unemployment insurance benefits for that period (decision # 92906). On August 21, 2019, decision # 92906 became final, without claimant having filed a request for hearing. OAH's Order No. 20-UI-145166, denied claimant's late request for hearing. Herein, EAB Decision 2020-EAB-0225, affirms Order No. 20-UI-145166.

CONCLUSIONS AND REASONS: Claimant was overpaid \$927.00 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 for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

The evidence is uncontroverted that claimant claimed and received benefits for the weeks at issue. The record also establishes that claimant was not entitled to receive those benefits as a matter of law, due to administrative decision # 92906, which became final on August 21, 2019, and concluded claimant was ineligible to receive benefits for the weeks at issue. The question that remains is whether claimant should be required to repay the overpayment to the Department under ORS 657.310, or whether she is liable to have the benefits deducted from future benefits otherwise payable under ORS 657.315.

The order under review concluded that ORS 657.310 applied to claimant's case, and that under that statute claimant "must repay" the Department \$927.00, the amount she was overpaid. Order No. 20-UI-145162 at 2. However, that statute only applies when the overpaid 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." There is no evidence in this record that the overpayment was caused by any false statement or misrepresentation on claimant's part. Rather, in this case, the evidence shows only that the overpayment occurred because the Department reversed its initial decision to pay benefits and issued a decision concluding claimant was not eligible for benefits during the weeks at issue, because she was not able to work.

Absent evidence of a false statement or misrepresentation, ORS 657.315 applies to this case. Under that statute, the \$927.00 overpayment stands, but claimant is not liable to repay it to the Department. Instead, claimant is liable only to have the \$927.00 in benefits deducted from future benefits otherwise payable to claimant within five years following the week in which the decision establishing the erroneous payment became final.

DECISION: Order No. 20-UI-145162 is modified, as outlined above. Order No. Order No. 20-UI-145166 is affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, 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. 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.

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