EO: 990
BYE: 201945

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

157
JR 005.00

# EMPLOYMENT APPEALS BOARD DECISION
# 2020-EAB-0256

*Order No. 20-UI-145877 Affirmed – Disqualification*
*Order No. 20-UI-145879 Affirmed – Disqualification*
*Order No. 20-UI-145880 Affirmed – Disqualification*
*Order No. 20-UI-145887 Affirmed – Disqualification*
*Order No. 20-UI-145892 Affirmed – Disqualification*
*Order No. 20-UI-145907 Affirmed – Disqualification*
*Order No. 20-UI-145908 Affirmed – Disqualification*
*Order No. 20-UI-145883 Reversed – No Disqualification*
*Order No. 20-UI-145888 Reversed – No Disqualification*
*Order No. 20-UI-145952 Affirmed – Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On January 30, 2020, the Oregon Employment Department (the Department) served notice of nine administrative decisions, each concluding that claimant failed without good cause to accept an offer of suitable work from the employer, and denying claimant benefits until she earned four times her weekly benefit amount after the week in which the failure to accept occurred. Decision # 133020 concluded that claimant failed without good cause to accept an offer of work from the employer on May 6, 2019, and denied claimant benefits beginning May 5, 2019. Decision # 134928 concluded that claimant failed without good cause to accept an offer of work from the employer on June 21, 2019, and denied claimant benefits beginning June 16, 2019. Decision # 134048 concluded that claimant failed without good cause to accept an offer of work from the employer on May 27, 2019, and denied claimant benefits beginning May 26, 2019. Decision # 134520 concluded that claimant failed without good cause to accept an offer of work from the employer on June 3, 2019, and denied claimant benefits beginning June 2, 2019. Decision # 140716 concluded that claimant failed without good cause to accept an offer of work from the employer on September 11, 2019, and denied claimant benefits beginning September 8, 2019. Decision # 140044 concluded that claimant failed without good cause to accept an offer of work from the employer on August 29, 2019, and denied claimant benefits beginning August 25, 2019. Decision # 132224 concluded that claimant failed without good cause to accept an offer of work from the employer on May 2, 2019, and denied claimant benefits beginning April 28, 2019. Decision # 133654 concluded that claimant failed without good cause to accept an offer of work from the employer on May 20, 2019, and denied claimant benefits beginning May 19, 2019. Decision # 140357 concluded that claimant failed without good cause to accept an offer of work from the employer on September 4, 2019, and denied claimant benefits beginning September 1, 2019.

On February 4, 2020, the Department served notice of an administrative decision concluding that claimant willfully failed to report refusing the employer's offers of work to obtain benefits, and therefore was overpaid $8,736 in benefits that she must repay along with a $2,620.80 monetary penalty, and is disqualified for 52 weeks of future benefits (decision # 202225).

Claimant filed a timely request for hearing on all ten administrative decisions. On March 4, 2020, ALJ S. Lee conducted a hearing on all ten administrative decisions at which the employer failed to appear, and on March 9, 2019 issued seven orders disqualifying claimant from receiving benefits until requalified under Department law. Order No. 20-UI-145877 affirmed decision # 133020, disqualifying claimant from receiving benefits, effective May 5, 2019 (week 19-19). Order No. 20-UI-145879 modified decision # 134928 by concluding that claimant failed without good cause to accept an offer of suitable work from the employer on August 21, 2019, not June 21, 2019, disqualifying claimant from receiving benefits, effective August 18, 2019 (week 34-19), not June 16, 2019. Order No. 20-UI-145880 affirmed decision # 134048, disqualifying claimant from receiving benefits, effective May 26, 2019 (week 22-19). Order No. 20-UI-145883 affirmed decision # 134520, disqualifying claimant from receiving benefits, effective June 2, 2019 (week 23-19). Order No. 20-UI-145887 affirmed decision # 140716, disqualifying claimant from receiving benefits, effective September 8, 2019 (week 37-19). Order No. 20-UI-145888 affirmed decision # 140044, disqualifying claimant from receiving benefits, effective August 25, 2019 (week 35-19). Order No. 20-UI-145892 affirmed decision # 132224, disqualifying claimant from receiving benefits, effective April 28, 2019 (week 18-19). On March 10, 2020, the ALJ issued another two orders disqualifying claimant from receiving benefits until requalified under Department law. Order No. 20-UI-145907 affirmed decision # 133654, disqualifying claimant from receiving benefits, effective May 19, 2019 (week 21-19). Order No. 20-UI-145908 affirmed decision # 140357, disqualifying claimant from receiving benefits, effective September 1, 2019 (week 36-19).

On March 10, 2019, the ALJ also issued Order No. 20-UI-145952, modifying decision # 202225 by concluding that claimant failed to report refusing the employer's offers of work and therefore was overpaid $8,736 in benefits that she must repay, but that claimant did not willfully do so, and therefore is not required to pay a monetary penalty or disqualified for future benefits.

On March 28, 2020, claimant filed an application for review of all ten orders with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-145877, 20-UI-145879, 20-UI-145880, 20-UI-145883, 20-UI-145887, 20-UI-145888, 20-UI-145892, 20-UI-145907, 20-UI-145908 and 20-UI-145952. For case-tracking purposes, this decision is being issued in decuplicate (EAB Decisions 2020-EAB-0255, 2020-EAB-0256, 2020-EAB-0257, 2020-EAB-0258, 2020-EAB-0259, 2020-EAB-0260, 2020-EAB-0261, 2020-EAB-0262, 2020-EAB-0263 and 2020-EAB-0264).

EAB considered all ten hearing records and claimant's written argument to the extent it was relevant and material, and based on the hearing records. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). In her argument, claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearings record in their entirety, which show that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

On *de novo* review and pursuant to ORS 657.275(2), the following orders under review are **adopted**:

Order No. 20-UI-145877 affirming decision # 133020 and disqualifying claimant from receiving benefits, effective week 19-19; Order No. 20-UI-145879 modifying decision # 134928 and disqualifying claimant from receiving benefits, effective week 34-19; Order No. 20-UI-145880 affirming decision # 134048 and disqualifying claimant from receiving benefits, effective week 22-19; Order No. 20-UI-145887 affirming decision # 140716 and disqualifying claimant from receiving benefits, effective week 37-19; Order No. 20-UI-145892 affirming decision # 132224 and disqualifying claimant from receiving benefits, effective week 18-19; Order No. 20-UI-145907 affirming decision # 133654 and disqualifying claimant from receiving benefits, effective week 21-19; Order No. 20-UI-145908 affirming decision # 140357 and disqualifying claimant from receiving benefits, effective week 36-19.

Also **adopted** are the portions of Order No. 20-UI-145952 concluding that claimant failed to report refusing the employer's offers of work on May 6, August 21, May 27, September 11, May 2, May 20 and September 4, 2019, but did not willfully do so, and therefore is not required to pay a monetary penalty or disqualified for future benefits based on those refusals**.**

The remainder of this decision addresses the following three orders:

Order No. 20-UI-145883, concluding that claimant failed without good cause to accept an offer of suitable work from the employer on June 3, 2019, disqualifying claimant from receiving benefits, effective, week 23-19; Order No. 20-UI-145888, concluding that claimant failed without good cause to accept an offer of suitable work from the employer on August 29, 2019, disqualifying claimant from receiving benefits, effective week 35-19; and the portions of Order No. 20-UI-145952 concluding that claimant failed to report refusing the employer's offers of work on June 3 and August 29, 2019, but did not willfully do so to obtain benefits and therefore is not required to pay a monetary penalty or disqualified for future benefits based on those refusals, and that claimant was overpaid $8,736 in benefits that she must repay the Department.

**FINDINGS OF FACT:** (1) On November 14, 2018, claimant filed an initial claim for benefits. Her weekly benefit amount was $624.

(2) During the period at issue, claimant was registered with an automated calling system to work for the employer, Aledo Independent School District. When claimant applied to be a substitute teacher, she specifically requested to substitute only at Stuart Elementary School, where her children attended. Once a person is registered as a substitute teacher, however, they are notified and contacted about other positions as well. The automated calling system called substitute teachers when it had an available assignment, and a substitute teacher could accept or reject the assignment.

(3) On Monday, June 3, 2019, claimant received an automated call from the employer purporting to offer claimant work as a substitute teacher at McAnally Intermediate School that day. Claimant did not accept because she thought it was an error since the employer's school year had ended on Friday, May 31, 2019, and claimant believed there was no school in June. When claimant claimed benefits for the week of June 2 through 8, 2019 (week 23-19), she indicated that she did not refuse a job offer that week.

(4) When claimant claimed benefits for the week of August 25 through 31, 2019 (week 35-19), she indicated that she did not refuse an offer of work that week. Based on a document received from the employer, the Department determined that on August 29, 2019, claimant refused an offer from the employer to work as a substitute teacher at Stuart Elementary School that day.

(5) In addition to weeks 23-19 and 35-19, claimant claimed benefits for the weeks from April 28 through June 1, 2019 (weeks 18-19 through 22-19), June 9 through July 13, 2019 (weeks 24-19 through 28-19), July 21 through August 24, 2019 (weeks 30-19 through 34-19), and September 1 through September 14, 2019 (weeks 36-19 and 37-19). When claiming weeks 23-19 through 33-19, claimant reported earning a total of $1856.01 during those weeks. When claiming weeks 35-19 through 37-19, claimant reported earning a total of $780 during those weeks.

**CONCLUSIONS AND REASONS:** The record fails to establish that claimant failed to accept a *bona fide* offer of work from the employer on June 3 or August 29. The record therefore fails to establish that claimant failed to report refusing offers of work from the employer on those dates, or that she willfully did so to obtain benefits. Claimant therefore is not required to pay a monetary penalty or disqualified from future benefits. However, claimant still was overpaid $8,736 in benefits that she must repay or have deducted from any future benefits otherwise payable to her under ORS chapter 657.

**Orders No. 20-UI-145883 and 20-UI-145888**

ORS 657.176(2)(e) provides, in relevant part, that an individual who failed without good cause to accept an offer of suitable work when offered is disqualified from the receipt of benefits until the individual earns four times the individual weekly benefit amount after the week in which the failure to accept occurred. In a job refusal case, the record must first establish that the employer made the claimant a *bona fide* offer of work and that the claimant refused it, thus making a prima facie showing that the claimant should be disqualified from receiving benefits.[1] Only if that is established does the burden shift to the claimant to show that the offer of work was not suitable, or that the claimant had good cause to refuse the offer.[2]

Order No. 20-UI-145883 found that on June 3, 2019, claimant refused an offer of work from the employer to work as a substitute teacher at McAnally Intermediate School that day.[3] The order concluded that claimant failed without good cause to accept the employer's offer of suitable work, and disqualifying claimant from receiving benefits, effective June 2, 2019, until requalified under Department law.[4] However, the record fails to establish that claimant refused a *bona fide* offer of work from the employer on June 3, 2019.

[1] *Alaska Tanker Co. v. Employment Dept.*, 185 Or App (2003); Oregon Employment Department, UI Benefit Manual §450 (Rev. 04/01/10).

[2] *See Vail v. Employment Division*, 30 Or App 365 (1977).

[3] Order No. 20-UI-145883 at 2.

[4] Order No. 20-UI-145883 at 3-4.

At hearing, claimant testified that although she received an automated telephone call from the employer on June 3, 2019 purporting to offer her work as substitute teacher at McAnally Intermediate School that day, she did not accept because she assumed it was an error since the employer's school year had ended on May 31, 2019. Transcript at 25. The record also shows that on January 31, 2020, claimant told a Department employee that, "There isn't even school in June. The last day of the school year was May 31st." Exhibit 1 at 23. In a document provided to the Department, the employer stated that work as a substitute teacher was not available during school breaks,[5] and the record fails to show that the employer had a summer term, and that it was in session on June 3, 2019. Absent such a showing, the evidence as to whether the automated telephone purporting to offer claimant work on June 3, 2019 was *bona fide* offer was, at best, equally balanced. The record therefore fails to establish claimant refused a *bona fide* offer of work from the employer on June 3, 2019. Order No. 20-UI-145883 therefore is reversed, and claimant is not disqualified from receiving benefits based on such an offer.

Order No. 20-UI-145888 found that on August 29, 2019, claimant refused an offer from the employer to work at Stuart Elementary School that day.[6] The order concluded that claimant failed without good cause to accept the employer's offer of suitable work, disqualifying claimant from receiving benefits, effective August 25, 2019, until requalified under Department law. However, the record fails to establish that claimant refused an offer from the employer to work at Stuart Elementary School on August 29, 2019.

The Department determined that claimant refused an offer from the employer to work at Stuart Elementary School on August 29, 2019 based on a document received from the employer. Exhibit 1 at 7. At hearing, however, claimant testified that she did not remember receiving such an offer from the employer on August 29th, and that she was confused as to why she would not have accepted it since she regularly accepted offers to work there. Transcript at 26. Claimant further testified that she could not find anything in her notes that would explain why she would have refused an offer to work at "my location," that she had no other obligations, and that she was "shocked when I saw it on there." Transcript at 26-27.

Absent a basis for concluding that claimant was not a credible witness, the evidence as to whether she received an offer from the employer to work at Stuart Elementary School on August 29, 2019 is, at best, equally balanced, and the record therefore fails to establish that claimant refused such an offer. Order No. 20-UI-145888 therefore is reversed, and claimant is not disqualified from receiving benefits based on a failure to accept an offer of work from the employer on August 29, 2019.

**Order No. 20-UI-145952**

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.* An individual who willfully made a false statement or misrepresentation, or

[5] Exhibit 1 at 7.
[6] Order No. 20-UI-145888 at 2.

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. An individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation also 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).

Because the record fails to establish that claimant refused a *bona fide* offer of work from the employer on June 3 or August 29, it also fails to establish that claimant failed to report refusing offers of work from the employer on those dates, or that she willfully did so to obtain benefits. Claimant therefore is not required to pay a monetary penalty or disqualified from future benefits. The remaining issue is whether the reversal of Orders No. 20-UI-145883 and 20-UI-145888 reduces the $8,736 overpayment assessed in Order No. Order No. 20-UI-145952.

As noted above, ORS 657.176(2)(e) provides, in relevant part, that an individual who failed without good cause to accept an offer of suitable work when offered is disqualified from the receipt of benefits until the individual earns four times the individual weekly benefit amount after the week in which the failure to accept occurred. The reversal of Order No. 20-UI-145883 means that claimant is not disqualified from receiving benefits based on a job refusal during week 23-19. However, Order No. 20-UI-145880, which has been affirmed, disqualified claimant from receiving benefits, effective week 22-19. When claiming benefits for weeks 23-19 through 33-19, claimant reported earning a total of $1856.0. Claimant was then re-disqualified from receiving benefits, effective week 34-19, by Order No. 20-UI-145879, which also has been affirmed. Because claimant did not earn more than four times her weekly benefit amount of $624 ($2,496) during weeks 23-19 through 33-19, she was not entitled to the benefits she received for those weeks. The reversal of Order No. 20-UI-145883 therefore does not reduce the $8,736 overpayment assessed in Order No. Order No. 20-UI-145952.

The reversal of Order No. 20-UI-145888 means that claimant is not disqualified from receiving benefits based on a job refusal during week 35-19. As noted above, however, Order No. 20-UI-145879, which has been affirmed, disqualified claimant from receiving benefits, effective week 34-19. When claiming benefits for weeks remaining weeks at issue, weeks 35-19 through 37-19, claimant reported earning a total of $780, which is less than four times her weekly benefit amount. Claimant also was re-disqualified from receiving benefits, effective week 36-19, by Order No. 20-UI-145908, and effective week 37-19 by Order No. 20-UI-145887, both of which have been affirmed. Claimant therefore was not entitled to the benefits she received for weeks 35-19 through 37-19, and the reversal of Order No. 20-UI-145888 does not reduce the $8,736 overpayment assessed in Order No. Order No. 20-UI-145952.

Order No. Order No. 20-UI-145952 therefore is affirmed. Claimant received $8,736 in benefits to which she is not entitled and is liable to either repay or have deducted from any future benefits otherwise payable to her under ORS chapter 657.

**DECISION:** Orders No. 20-UI-145877, 20-UI-145879, 20-UI-145880, 20-UI-145887, 20-UI-145892, 20-UI-145907 and 20-UI-145908 are affirmed. Orders No. 20-UI-145883 and 20-UI-145888 are set aside. Order No. 20-UI-145952 is affirmed.

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

**DATE of Service: April 24, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

**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 فورا، 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 دستورالعمل 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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