

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0381**

*Modified*  
*Overpayment Recovery by Deduction Only, Repayment Not Required*

**PROCEDURAL HISTORY:** On January 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$755.00 overpayment which was subject to collection only by deduction from future benefits payable to claimant during the five year period following the week in which the decision became final (decision # 92229). Claimant filed a timely request for hearing. On February 27, 2020, the Office of Administrative Hearings (OAH) served, by mail, notice of a telephone hearing scheduled for March 11, 2020 at 2:30 p.m. On March 11, 2020, claimant failed to appear for the hearing, and on March 12, 2020, ALJ Monroe issued Order No. 20-UI-146046 dismissing claimant's request for hearing for that reason.

On March 30, 2020, claimant filed a timely request to reopen the hearing. On April 20, 2020, OAH served, by mail, notice of a telephone hearing scheduled for May 7, 2020 at 1:30 p.m. On May 7, 2020, ALJ Scott conducted a hearing, at which both the Department and claimant appeared, and on May 11, 2020, issued Order No. 20-UI-149537, allowing claimant's request to reopen the March 11, 2020 hearing, cancelling Order No. 20-UI-146046, and modifying decision # 92229 by assessing a \$755.00 overpayment, which was subject to repayment under ORS 657.310.

On May 15, 2020, claimant filed an application for review of Order No. 20-UI-149537 with the Employment Appeals Board (EAB). With her application for review, claimant submitted a written argument. EAB considered claimant's written argument to the extent it was based on the hearing record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen is **adopted**.

**FINDINGS OF FACT:** (1) On August 11, 2019, claimant filed an initial claim for unemployment insurance benefits. The Department established that the claim was valid with a weekly benefit amount of \$151. Claimant claimed and was paid \$151 in benefits for each of the weeks including September 8 through October 12, 2019 (weeks 37-19 through 41-19), the weeks at issue.

(2) On December 5, 2019, the Department issued an administrative decision concluding that claimant was not available for work during the weeks at issue based on childcare issues and was ineligible for benefits for those weeks (decision #175036). Claimant filed a timely request for hearing regarding that decision. On January 16, 2020, ALJ Monroe conducted a hearing, at which claimant appeared, and on January 21, 2020, issued Order No. 20-UI-143052, which also concluded that claimant was not available for work during the weeks at issue and ineligible for benefits for those weeks. On February 1, 2020, claimant filed an application for review of Order No. 20-UI-143052 with the Employment Appeals Board (EAB). On March 10, 2020, EAB issued Appeals Board Decision 2020-EAB-0105, which affirmed Order No. 20-UI-143052. On April 9, 2020, Appeals Board Decision 2020-EAB-0105 became final without claimant having filed a petition for judicial review with the Oregon Court of Appeals.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Claimant was overpaid \$755.00 in benefits and is liable only 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 record establishes that claimant was overpaid \$755.00 in regular benefits as a matter of law. A final Appeals Board Decision, 2020-EAB-0105, concluded claimant was not eligible for benefits that the Department had already paid her 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 only 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 \$755.00, the amount she was overpaid.<sup>2</sup> 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." No party offered evidence at hearing that claimant caused the overpayment by making a false statement or misrepresentation or failing to disclose a material fact. Therefore, there is no evidence in this record that the overpayment was caused by any

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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 the objection in writing, 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.

<sup>2</sup> Order No. 20-UI-149537 at 4-5.

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 the benefits she had received.

Absent evidence of a false statement or misrepresentation, ORS 657.315 applies to this case. Under that statute, the \$755.00 overpayment stands, but claimant is liable only to have the \$755.00 in benefits deducted from future benefits otherwise payable to claimant within five years following the week in which the decision establishing the erroneous payment becomes final.

**DECISION:** Order No. 20-UI-149537 is modified, as outlined above.

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

**DATE of Service: June 12, 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 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 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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