

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0726

Order No. 20-UI-156027 Affirmed ~ Benefits Payable Reduced
Order No. 20-UI-156046 Affirmed ~ Overpayment Assessed

PROCEDURAL HISTORY: On September 18, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's weekly unemployment insurance benefits were reduced to \$346 during a school recess period of June 14, 2020 to August 29, 2020 (decision # 134459). Claimant filed a timely request for hearing. On October 6, 2020, the Department served notice of another administrative decision assessing a \$12,160 overpayment that claimant was required to repay (decision # 134719). Claimant filed timely requests for hearings on decisions # 134459 and 134719. On October 26, 2020, ALJ Wyatt conducted separate hearings on decision # 134459 and 134719, and on November 3, 2020 issued Orders No. 20-UI-156027 and 20-UI-156046, affirming those decisions. On November 16, 2020 claimant filed applications for review of Orders No. 20-UI-156027 and 20-UI-156046 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-156027 and 20-UI-156046. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0725 and 2020-EAB-0726, respectively).

With each application for review, claimant submitted a written argument. Claimant did not declare that they provided a copy of their argument to the opposing party or parties regarding Order No. 20-UI-156027 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 in that case as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing regarding Order No. 20-UI-156027 when reaching the part of this consolidated decision concerning that case. *See* ORS 657.275(2).

EAB did consider claimant's written argument regarding Order No. 20-UI-156046 when reaching the part of this consolidated decision concerning that case.¹ In that argument, claimant asserted, "I am concerned that I am being charged to pay back an overpayment for the time period I was not claiming for weekly benefits." Written Argument at 1. In another part of her argument, claimant asserted that she did not claim benefits for the period June 22 through September 5, 2020. Written Argument at 2. However, claimant did not dispute at hearing that she received \$6,160 in regular unemployment insurance benefits and \$6,000 in FPUC benefits for the weeks at issue in this case. Those weeks were weeks 15-20 through 24-20, which covered the period April 5, 2020 through June 13, 2020. Those weeks were outside of the period for which claimant asserted that she did not claim benefits.

EAB reviewed the entire hearing record of Order No. 20-UI-156027. On *de novo* review and pursuant to ORS 657.275(2), Order No. 20-UI-156027 is **adopted**. The remainder of this decision shall address Order No. 20-UI-156046, the order under review that assessed a total overpayment of \$12,160 claimant was required to repay the Department.

FINDINGS OF FACT: (1) On March 28, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's weekly benefit amount at \$616.

(2) Claimant filed claims for regular benefits for each of the weeks including April 5, 2020 through June 13, 2020 (weeks 15-20 through 24-20), the weeks at issue. When claimant filed each of her weekly claims, claimant did not report the \$660 in weekly earnings she continued to receive from the Vancouver School District (VSD), an out-of-state employer, after it closed on March 13, 2020 due to COVID-19. Claimant did not understand she was required to report those earnings. Claimant mistakenly certified to the Department in her weekly reports that she had received no earnings that week. Based on those certifications, the Department paid claimant benefits.

(3) For each of the weeks at issue, claimant received regular benefits in the amount of \$616. For each of those weeks, claimant also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600. For the 10 weeks at issue, claimant received total regular benefits of \$6,160 and total FPUC benefits of \$6,000.

CONCLUSIONS AND REASONS: Claimant received \$6,160 in regular benefits and \$6,000 in FPUC benefits to which she was not entitled and must repay or have deducted from future benefits otherwise payable under ORS Chapter 657.

Overpayment of Regular Benefits. 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.*

¹ In their written argument, claimant requested, in essence, that EAB waive or postpone the due date of the overpayment assessed. However, EAB does not have jurisdiction in this case to do either. Claimant should address such requests to the OED Recovery Unit at 800-553-5396 for a possible resolution.

Claimant's weekly certifications to the Department that she had received no earnings during the week claimed were false, and caused her to receive the \$6,160 in regular benefits she received for the weeks at issue. Regardless of claimant's knowledge or intent in making those reports, and even if the false reports were the result of a mistake, she is liable under ORS 657.310(1) to either repay the \$6,160 in regular benefits she received for weeks 15-20 through 24-20 to the Department or have that amount deducted from any future benefits otherwise payable to her under ORS chapter 657.

Overpayment of FPUC Benefits. Under the provisions of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pub. L. 116-136, claimant also received \$6,000 in FPUC benefits to which she was not entitled because she did not qualify for benefits under state law as just explained. Pursuant to Pub. L. 116-136, § 2104(f)(2) (July 2, 2020), an individual who receives FPUC payments to which the individual was not entitled is liable to repay those benefits, unless the payment of those benefits was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. Therefore, claimant is liable to repay to the Department the \$6,000 in FPUC benefits she received between April 5, 2020 through June 13, 2020 (weeks 15-20 through 24-20).

DECISION: Orders No. 20-UI-156027 and 20-UI-156046 are affirmed.

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

DATE of Service: December 16, 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 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.

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