

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0807

Affirmed ~ Ineligible Weeks 24-20 through 25-20
Affirmed ~ Overpayment

PROCEDURAL HISTORY: On August 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from June 7, 2020 through June 20, 2020, and was ineligible to receive unemployment insurance benefits for that period of time (decision # 85617). On September 9, 2020, decision # 85617 became final without claimant having filed a timely request for hearing. On October 19, 2020, the Department served notice of an administrative decision, based in part on decision # 85617, assessing an overpayment of \$488 in regular unemployment insurance benefits, and \$1,200 of Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 154656). On November 5, 2020, claimant filed a late request for hearing for decision # 85617 and a timely request for hearing for decision # 154656.

On November 18, 2020, the Office of Administrative Hearings (OAH) served notice of a consolidated hearing for December 2, 2020 to consider claimant's late request for hearing on decision # 85617, and if granted, the merits of decision # 85617, and to consider decision # 154656. On December 2, 2020, the consolidated hearing was postponed so that an interpreter could be obtained for claimant. On December 2, 2020, OAH served notice of a consolidated hearing for December 16, 2020 to consider claimant's late request for hearing on decision # 85617, and if granted, the merits of decision # 85617, and to consider decision #154656. On December 16, 2020, ALJ Schmidt conducted a consolidated hearing interpreted in Somali. On December 18, 2020, ALJ Schmidt issued Order No. 20-UI-157849, allowing claimant's late request for hearing on decision # 85617 and affirming decision # 85617, and issued Order No. 20-UI-157850, affirming decision # 154656.

On December 23, 2020, claimant filed an application for review of Orders No. 20-UI-157849 and 20-UI-157850 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-157849 and 20-UI-157850. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0806 and 2020-EAB-0807).

EAB reviewed the entire hearing record of Order No. 20-UI-157849. Based on a *de novo* review and pursuant to ORS 657.275(2), Order No. 20-UI-157849, which allowed claimant's late request for hearing on decision # 85617 and affirmed # 85617, is **adopted**. The remainder of this decision shall address Order No. 20-UI-157850, which assessed an overpayment of \$1,688 that claimant was required to repay to the Department.

FINDINGS OF FACT: (1) On March 18, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's weekly benefit amount at \$244.

(2) Claimant filed claims for regular benefits for the weeks of June 7, 2020 through June 20, 2020 (weeks 24-20 through 25-20), the weeks at issue. During the weeks at issue, claimant sought work as a housekeeper. During both of the weeks at issue, claimant reported to the Department that she was physically and mentally able to perform the work she sought.

(3) On June 8, 2020, claimant injured her hand. From June 8, 2020 through June 20, 2020, claimant also suffered from a fever. From June 8, 2020 through June 20, 2020, claimant was not able to perform work as a housekeeper due to her hand injury and fever.

(4) For each of the weeks at issue, claimant received regular benefits in the amount of \$244 and FPUC benefits in the amount of \$600. Claimant received total regular benefits of \$488, and total FPUC benefits of \$1,200.

CONCLUSIONS AND REASONS: Claimant received \$488 in regular benefits and \$1,200 in FPUC benefits to which she was not entitled. Claimant is liable for an overpayment of \$488 in regular benefits to be repaid or deducted from future benefits otherwise payable under ORS Chapter 657. Claimant is also liable for an overpayment of \$1,200 in FPUC benefits to be deducted from future regular or FPUC payments to which claimant is otherwise entitled.

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.*

When claimant reported to the Department that she was physically able to perform work as a housekeeper during the weeks at issue, claimant made false statements that caused her to receive the \$488 in regular benefits she received for the weeks at issue. Claimant's statements were false because at the time she made them, she was not in fact able to work due to her fever and hand injury. Claimant's false statements caused her to receive the \$488 in regular benefits because, had claimant accurately reported that she was not able to work, the Department would have identified claimant as ineligible for benefits and claimant would not have received the \$488 in regular benefits she received for the weeks at issue. Order No. 20-UI-157849, which has been adopted, affirmed decision # 85617 and concluded that claimant was ineligible to receive benefits for the weeks at issue because claimant's fever and hand injury rendered her unable to work during that period of time. Order No. 20-UI-157849 at 4. Thus, claimant made false statements of material fact that caused her to receive benefits during the weeks at

issue to which she was not entitled. Claimant must repay the \$488 in regular benefits she received for weeks 24-20 through 25-20 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 \$1,200 in FPUC benefits to which she was not entitled because she was not eligible for benefits under state law as explained above. 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 Department waives such repayment because it determines that 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. The record does not show the Department has waived repayment here. Therefore, claimant is liable for the overpayment of \$1,200 in FPUC benefits she received between June 7, 2020 through June 20, 2020 (weeks 24-20 through 25-20). Under Pub. L. 116-136, § 2104(f)(3), the Department may recover the FPUC benefits by deduction from any future regular or FPUC payments to which claimant is otherwise entitled.

DECISION: Order No. 20-UI-157849¹ and Order No. 20-UI-157850 are affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 27, 2021

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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¹ This decision denies payment of your Unemployment Insurance (UI) benefits. However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.



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 desisyong ito.

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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