

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0664

Affirmed
Request to Reopen Allowed
Overpayment Assessed

PROCEDURAL HISTORY: On October 22, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$1,620.00 in regular unemployment insurance benefits and \$6,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 90309). Claimant filed a timely request for hearing. On February 16, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 26, 2021 at 1:30 p.m. On February 26, 2021, claimant failed to appear at the hearing, and ALJ Murdock issued Order No. 21-UI-161757, dismissing claimant's request for hearing for failing to appear. On March 15, 2021, claimant filed a timely request to reopen the February 26, 2021 hearing. On July 23, 2021, ALJ Wyatt conducted a hearing, and on August 3, 2021 issued Order No. 21-UI-171754, concluding that claimant had good cause to reopen the February 26, 2021 hearing, canceling Order No. 21-UI-161757, and affirming decision # 90309. On August 17, 2021, claimant filed an application for review of Order No. 21-UI-171754 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

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 concluding that claimant had good cause to reopen the February 26, 2021 hearing is **adopted**. The remainder of this decision addresses claimant's overpayment of regular and FPUC benefits.

FINDINGS OF FACT: (1) Claimant's regular employer Laurel Hill Center claimed benefits on claimant's behalf through the Department's Work Share program for the weeks including April 19, 2020 through June 27, 2020 (weeks 17-20 through 26-20). These are the weeks at issue. The Department established claimant's weekly benefit amount as \$648.00. Because claimant was still working 75% of her regular hours for Laurel Hill Center during the weeks at issue, her weekly benefit amount through the Work Share program was 25% of her regular weekly benefit amount, or \$162.00.

(2) During the weeks at issue, claimant also worked for Home Care Workers, earning \$397.60 per week. Laurel Hill Center reported these earnings when they filed weekly claims for Work Share benefits on claimant's behalf.

(3) The Department did not key claimant's earnings from Home Care Workers into the claims system when they processed the weekly claims. Thereafter, the Department paid claimant \$162.00 in regular benefits and \$600.00 in FPUC benefits for each of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant received \$1,620.00 in regular benefits and \$6,000.00 in FPUC benefits to which she was not entitled, and is liable to have the amount deducted from any future benefits otherwise payable to claimant under ORS Chapter 657 and applicable federal law.

Remuneration. Only unemployed individuals are eligible to receive benefits in any week. *See* ORS 657.155(1). An individual is deemed "unemployed" in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount. ORS 657.100(1).

For each of the weeks at issue, claimant earned \$397.60 per week from her work with Home Care Workers, which exceeded her weekly benefit amount of \$162.00. As a result, claimant was not "unemployed" during any of the weeks at issue, and was therefore not eligible to receive benefits for those weeks.

Overpayment of Regular Benefits. ORS 657.315(1) provides, in relevant part, 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 records shows that Laurel Hill Center correctly reported claimant's earnings from Home Care Workers for each of the weeks at issue, but that the Department failed to include these earnings in the weekly claims for those weeks. As a result, claimant was paid \$1,620.00 in regular benefits to which she was not entitled. Nothing in the record suggests that the oversight was the result of claimant's false statement, misrepresentation of a material fact or failure to disclose the same; the error was solely attributable to the Department. For that reason, under ORS 657.315(1), claimant is not required to directly repay the \$1,620.00 in regular benefits to the Department. Instead, the benefits must be repaid via deduction from any future benefits otherwise payable to claimant within five years after decision # 90309 becomes final.

Overpayment of FPUC Benefits. Under the CARES Act,¹ claimant received \$6,000.00 in FPUC benefits to which she was not entitled because she did not qualify for regular benefits under state law, as explained above. As the order under review concluded, federal law provides that claimant must repay the FPUC benefits by deduction from any future regular or FPUC benefits to which claimant is otherwise entitled. An individual who receives FPUC payments to which the individual was not entitled must repay those benefits, unless the Department waives such repayment if it determines that payment of those benefits was without fault on the part of the individual, and such repayment would be contrary to equity and good conscience.² The record does not show that the Department has waived repayment here. The CARES Act also provides, in relevant part, “The [Department] shall recover the amount to be repaid, or any part thereof, by deductions from any [FPUC benefits] payable to such individual . . . during the 3-year period after the date such individuals received the payment of the [FPUC benefits] to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.”³ Therefore, claimant’s liability for repayment of the \$6,000.00 in FPUC benefits is limited to deduction from any future regular or FPUC benefits to which claimant is otherwise entitled, within three years of when the benefits were paid.

In sum, claimant is liable for an overpayment of \$1,620.00 in regular benefits to be deducted from future benefits within five years after decision # 90309 becomes final, and for an overpayment of \$6,000.00 in FPUC benefits to be deducted from future benefits within three years of when the benefits were paid.

DECISION: Order No. 21-UI-171754 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: September 20, 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 Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pub. L. 116-136.

² Pub. L. 116-136, § 2104(f)(2).

³ Pub. L. 116-136, § 2104(f)(3).



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 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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