

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0808

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On July 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was paid unemployment insurance benefits to which she was not entitled and assessing an overpayment of \$824 in regular unemployment insurance and Pandemic Emergency Unemployment Compensation (PEUC) benefits and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # 90021). Claimant filed a timely request for hearing. On August 31, 2021, ALJ Scott conducted a hearing and then continued the hearing to allow for additional evidence. On August 31, 2021, the Office of Administrative Hearings (OAH) mailed the parties notice of a continued hearing scheduled for September 16, 2021 at 10:45 a.m. On September 13, 2021, the Department served notice of an amended administrative decision cancelling and replacing decision # 90021, concluding that claimant was paid benefits to which she was not entitled and assessing an overpayment of \$342 in PEUC benefits and \$600 in FPUC benefits (decision # 165532). On September 16, 2021, ALJ Scott conducted a hearing, and on September 21, 2021 issued Order No. 21-UI-175192, affirming decision # 165532.¹ On October 4, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: With her application for review, claimant filed a written argument. In her argument, claimant asserted that prior to the September 16, 2021 hearing she neither received notice of the issuance of decision # 165532, nor received notice that the September 16, 2021 continued hearing would relate to decision # 165532, and that she never waived her right to this notice. OAR 471-040-0025(8) (effective August 1, 2004) provides, in pertinent part, “[I]n no event shall the administrative law judge accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.” However, the record shows that neither decision # 165532, nor the September 16, 2021 continued hearing addressing the merits of decision # 165532, involved “a new issue.” Rather, decision # 165532, and the September 16, 2021 continued hearing,

¹ Order No. 21-UI-175192 stated that it affirmed decision # 90021. Order No. 21-UI-175192 at 4. However, inasmuch as the record shows that the ALJ treated decision # 165532 as the operative administrative decision under review at the September 16, 2021 hearing, EAB has inferred that the reference to decision # 90021 was a scrivener’s error, and that Order No. 21-UI-175192 meant to affirm decision # 165532. September 16, 2021 Audio Record at 01:26 to 01:41; September 16, 2021 Audio Record at 03:04 to 03:24; September 16, 2021 Audio Record at 03:48.

addressed the same issue that was the subject of cancelled decision # 90021: whether the Department paid claimant benefits to which she was not entitled and, if so, whether she is liable to repay such amount or have such amount deducted from benefits payable.

Furthermore, the record shows that during the September 16, 2021 continued hearing, claimant declined an opportunity to object to the admission of the schedule of adjustments attached to decision # 165532 as Exhibit 1. September 16, 2021 Audio Record at 04:04 to 04:17. Under the circumstances, claimant's failure to object to the admission of Exhibit 1 served as a waiver of notice consistent with OAR 471-040-0025(8).

EAB considered the remainder of claimant's written argument when reaching this decision.

FINDINGS OF FACT:² (1) On July 23, 2019, claimant filed an initial claim for benefits, which established a benefit year beginning July 21, 2019 and expiring July 18, 2020 (weeks 30-19 through 29-20) ("the first benefit year"). The Department paid claimant regular unemployment insurance (regular UI) benefits through the week ending June 13, 2020 (week 24-20), when she exhausted her balance of regular UI benefits, and PEUC benefits thereafter for the weeks including June 14, 2020 through July 18, 2021 (weeks 25-20 through 29-20). Claimant's weekly benefit amount for both her regular UI benefits and her PEUC benefits during the first benefit year was \$171.

(2) On August 12, 2020, claimant filed another initial claim for benefits. The Department determined that claimant had sufficient wages to qualify for a new benefit year, and a new benefit year was established beginning July 19, 2020 and expiring July 17, 2021 (weeks 30-20 through 28-21) ("the second benefit year"). The Department paid claimant regular UI benefits through the week ending January 16, 2021 (week 02-21), when she exhausted her balance of regular UI benefits, and PEUC benefits thereafter. Claimant's weekly benefit amount for her regular UI benefits during the second benefit year was \$412.

(3) On October 27, 2020, during the second benefit year, the Department processed a payment to claimant of \$412 in regular UI benefits for the week ending August 1, 2020 (week 31-20). Exhibit 2 at 10, 14.

(4) On November 20, 2020, during the second benefit year, the Department processed payments to claimant of \$412 in regular UI benefits and \$600 in FPUC benefits for the week ending July 25, 2020 (week 30-20). Exhibit 2 at 10, 14.

(5) On February 9, 2021, the Department erroneously determined that claimant should have received weekly PEUC benefits of \$171 during the first benefit year for weeks 30-20 and 31-20, despite the fact that claimant had already been paid regular UI benefits of \$412 in the second benefit year for both weeks 30-20 and 31-20. Exhibit 2 at 14. The Department also erroneously determined that claimant should receive a second FPUC payment of \$600 for week 30-20. Exhibit 2 at 14.

(6) Weeks 30-20 and 31-20 are the weeks at issue for purposes of decision # 165532.

² EAB has taken notice of the findings of fact from EAB decision 2021-EAB-0773 and incorporated them by reference into this decision. EAB has included a convenience copy of EAB Decision 2021-EAB-0773 with the copies of this decision that were mailed to the parties.

CONCLUSIONS AND REASONS: Claimant is liable for an overpayment of \$342 in PEUC benefits and \$600 in FPUC benefits to be deducted from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department.

Overpayment of PEUC benefits. Pursuant to section 2107(e)(2) of the CARES Act of 2020, Pub. L. 116-136, an individual who receives PEUC 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 shows that claimant's first benefit year had already expired at the conclusion of week 29-20 and claimant had already received regular UI benefit payments of \$412 for both weeks 30-20 and 31-20 during the second benefit year. Because she was eligible for, and received, regular UI benefits during weeks 30-20 and 31-20, she was not entitled to PEUC benefits for those same weeks. *See* Pub. L. 116-136, § 2107(a)(2). Therefore, claimant was overpaid \$171 in PEUC benefits to which she was not entitled during both weeks 30-20 and 31-20, for a total overpayment of \$342. Furthermore, at the September 16, 2021 continued hearing claimant did not dispute that she was overpaid a total of \$342 in PEUC benefits during weeks 30-20 and 31-20. September 16, 2021 transcript at 16, 21-23. Although the record shows that the payment of the PEUC benefits during weeks 30-20 and 31-20 was the result of the Department's error, the record does not show that the Department has waived repayment. Accordingly, under Pub. L. 116-136, section 2107(e)(3), the Department may recover the \$342 in PEUC benefits by deduction from any future unemployment compensation payable to claimant under any state or federal compensation law administered by the Department.

Overpayment of FPUC benefits. Under the provisions of the CARES Act, claimant also received \$600 in FPUC benefits during week 30-20 to which she was not entitled because she had already received a \$600 FPUC payment for that week during the second benefit year. Pursuant to Pub. L. 116-136, section 2104(f)(2), an individual who receives FPUC benefits to which they are 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. Although the record shows that that the payment of the extra \$600 in FPUC benefits during week 30-20 was the result of the Department's error, the record does not show that the Department has waived repayment here. Therefore, claimant is liable for the overpayment of \$600 in FPUC benefits she received during week 30-20. Pursuant to Pub. L. 116-136, section 2104(f)(3)(A), the Department may recover the FPUC benefits by deduction from any future FPUC payments payable to her or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department.

For the above reasons, claimant is liable for an overpayment of \$342 in PEUC benefits and an overpayment of \$600 in FPUC benefits, to be deducted from future state or federal unemployment benefits.

DECISION: Order No. 21-UI-175192 is affirmed.

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

DATE of Service: November 10, 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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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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