

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1030

Reversed & Remanded

PROCEDURAL HISTORY: On December 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 8, 2020 (decision # 144450). On December 29, 2020, decision # 144450 became final without claimant having filed a request for hearing. On May 7, 2021, the Department served notice of an administrative decision, based in part on decision # 144450, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain unemployment insurance benefits, and assessing a \$8,096.00 overpayment of regular benefits, a \$9,600.00 overpayment of Federal Pandemic Unemployment Compensation (FPUC), a \$1,619.20 monetary penalty, and 52 penalty weeks. On May 24, 2021, claimant filed a late request for hearing for decision # 144450 and a timely request for hearing on the May 7, 2021 administrative decision.

On November 10, 2021, ALJ Janzen conducted a consolidated hearing, and on November 12, 2021 issued Order No. 21-UI-179545, dismissing claimant's late request for hearing on decision # 144450 as late without good cause. Also on November 12, 2021, ALJ Janzen issued Order No. 21-UI-179618, modifying the May 7, 2021 administrative decision by concluding that claimant was liable for a \$8,096.00 overpayment of regular benefits and a \$9,600.00 overpayment of FPUC benefits but was not subject to a monetary penalty or penalty weeks.¹ On December 2, 2021, claimant filed an application for review on Orders No. 21-UI-179545 and 21-UI-179618 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-179545 and No. 21-UI-179618. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-1030 and 2021-EAB-1031).

FINDING OF FACT: (1) On December 7, 2021, EAB requested that the Office of Administrative Hearings (OAH) forward the record in this case to EAB for use in reviewing Orders No. 21-UI-179545

¹ Order No. 21-UI-179618 characterized its disposition as affirming the May 7, 2021 administrative decision. Order No. 21-UI-179618 at 7. In fact, it modified the administrative decision because it concluded claimant was not subject to a monetary penalty or penalty weeks.

and 21-UI-179618. The record EAB received from OAH on December 8, 2021 contained an incomplete audio recording of the hearing that abruptly cuts off at the 1:34:03 mark of the recording, while a witness is testifying. On December 8, 2021, EAB requested that OAH forward a complete audio recording of the hearing. In response to this request, on December 8, 2021, EAB received an audio file that was blank. Thereafter, OAH checked with its vendor and, on December 14, 2021, confirmed to EAB that there is no additional audio recording of the hearing.

CONCLUSIONS AND REASONS: This matter is set aside as unsupported by a complete record, and remanded to OAH for such other and further proceedings as may be necessary to complete the record.

ORS 657.275 provides that EAB shall review the record of the case and promptly affirm, modify, or set aside the order of the ALJ if the Director of the Department, or any interested party, files a timely application for review. On December 7, 2021, EAB notified OAH that applications for review of Orders No. 21-UI-179545 and No. 21-UI-179618 had been filed and requested the record in these cases. The record is not complete, and it appears that further proceedings are or may be necessary before the complete record can be provided. Orders No. 21-UI-179545 and No. 21-UI-179618 must therefore be reversed as unsupported by a complete record, and the case remanded for such other and further proceedings as may be necessary to complete the record.

DECISION: Orders No. 21-UI-179545 and No. 21-UI-179618 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: December 16, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-179545 and No. 21-UI-179618 or return these matters to EAB. Only a timely applications for review of the subsequent orders will cause these matters to return to EAB.

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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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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