

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0245

Affirmed

Overpayment Assessed to be Deducted from Future Benefits Payable, Absent Waiver

PROCEDURAL HISTORY: On January 4, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an overpayment of \$3,408 in regular unemployment insurance benefits to be deducted from future benefits payable during the five-year period in the which the decision became final, an overpayment of \$1,280 in Pandemic Emergency Unemployment Compensation (PEUC) to be deducted from future benefits payable during the three-year period following the week in which the decision became final, and an overpayment of \$4,800 in Federal Pandemic Unemployment Compensation (FPUC) to be deducted from future benefits payable during the three-year period following the week in which the decision became final (decision # 115255). Claimant filed a timely request for hearing. On February 8, 2022, ALJ S. Lee conducted a hearing and on February 11, 2022 issued Order No. 22-UI-186243, affirming decision # 115255. On February 16, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant filed written arguments on February 16, 2022, February 18, 2022, and March 14, 2022. Claimant's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) In mid-2019, claimant quit her job working for a hotel to start an events planning business. Thereafter, claimant started the events planning business and carried on as a self-employed individual. Following the onset of the COVID-19 pandemic, however, the services claimant performed through her business were reduced significantly as a direct result of the pandemic.

(2) On April 6, 2020, claimant filed an initial claim for regular unemployment insurance (Regular UI) benefits. Claimant contacted the Department to file the initial claim and when she did so, she informed the Department representative that she wished to file a claim for Pandemic Unemployment Assistance (PUA), not Regular UI, because claimant was self-employed. The representative who assisted claimant advised that claimant was monetarily eligible for Regular UI benefits and, because federal law barred an

individual from receiving PUA benefits if they are eligible for Regular UI, claimant was required to file her initial claim for Regular UI instead of PUA. Claimant told the representative that she had voluntarily quit working for her previous employer in order to pursue her self-employment business. Nevertheless, the representative processed the initial claim and shortly thereafter, the Department began paying claimant Regular UI benefits.

(3) Claimant claimed regular UI benefits for the weeks including April 5, 2020 through October 17, 2020 (weeks 15-20 through 42-20), and PEUC benefits for the weeks including October 18, 2020 through December 26, 2020 (weeks 43-20 through 52-20). These are the weeks at issue.

(4) The Department paid claimant \$255 of Regular UI for each of the weeks including weeks 15-20 through 42-20 and \$255 of PEUC for each of the weeks including weeks 43-20 through 52-20, except for weeks 15-20, 25-20, 31-20, 34-20, and 35-20 due to the amount of earnings claimant reported for each of those weeks. For weeks 15-20, 25-20, 31-20, 34-20, and 35-20, the Department paid claimant \$161, \$130, \$0, \$237, and \$237, respectively. The Department also paid claimant \$600 of FPUC benefits for weeks 15-20 through 30-20. For the weeks at issue, claimant received a total of \$9,180 of Regular UI and PEUC benefits, and a total of \$9,600 of FPUC benefits.

(5) On December 30, 2020, the Department served notice of an administrative decision concluding that claimant was disqualified from receiving Regular UI benefits because quitting her job in 2019 to pursue self-employment amounted to voluntarily leaving work without good cause. Based on this decision, which subsequently became final, the Department determined that the Regular UI, PEUC, and FPUC benefits claimant had received during the weeks at issue were overpaid.

(6) On January 5, 2021, the Department performed a “claim swap” in which claimant’s Regular UI claim was converted into a PUA claim. Transcript at 17. The Department used a portion of the PUA benefits and accompanying FPUC benefits to which claimant was entitled under the PUA claim to offset 50% of the overpayment from the Regular UI, PEUC, and FPUC benefits she had previously received.¹ Under this process, a total of \$4,492 of the Regular UI and PEUC overpayment and \$4,200 of the FPUC overpayment were offset by the Department. Following the offset, the Department determined claimant’s remaining Regular UI overpayment was \$3,408, her remaining PEUC overpayment was \$1,280, and her remaining FPUC overpayment was \$4,800.²

(7) Claimant applied for a waiver of the overpayments she received, but the Department cannot process the waiver requests until this appeal is final.

CONCLUSIONS AND REASONS: Claimant received \$3,408 in Regular UI benefits, \$1,280 in PEUC benefits, and \$4,800 in FPUC benefits to which she was not entitled. Claimant is liable to have the \$3,408 in Regular UI benefits deducted from any future benefits otherwise payable to claimant during

¹ Federal law allows the Department to offset only 50% from PUA payments to recover overpayments from other benefits programs. See U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021), at I-27.

² The \$4,200 FPUC offset subtracted from the \$9,600 FPUC overpayment yields a \$5,400 figure. The Department assessed only a \$4,800 overpayment following the offset and is presumed to have waived the \$600 difference between \$5,400 and \$4,800 during the offsetting process.

the five-year period following the date decision # 115255 becomes final. Claimant is liable for an overpayment of \$1,280 in PEUC benefits to be deducted from future PEUC payments to which claimant is otherwise entitled or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department during the three-year period following the date decision # 115255 becomes final. Claimant is also liable for an overpayment of \$4,800 in FPUC benefits to be deducted from future FPUC payments to which claimant is otherwise entitled or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department during the three-year period following the date decision # 115255 becomes final.

Overpayment of Regular UI 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 record shows that claimant was paid Regular UI benefits to which she was not entitled because she quit her job in 2019 to pursue self-employment, which, based on the administrative decision issued December 30, 2020 that subsequently became final, constituted voluntarily leaving work without good cause. Because claimant voluntarily left work without good cause, she was disqualified from receiving Regular UI pursuant to ORS 657.176(2)(c). However, the record shows that the Department overpaid claimant due to agency error because, when claimant filed her initial claim for benefits on April 6, 2020, she informed the Department that she wished to file a claim for PUA, not Regular UI, and furthermore informed the Department at that time that she had quit her hotel job to pursue self-employment. As a result, the Department erred in authorizing claimant's Regular UI claim because it should have recognized that claimant was not eligible for Regular UI because she quit work without good cause.³ Therefore, because the Department overpaid claimant due to agency error (rather than because claimant made a misrepresentation or failed to disclose a material fact), claimant is not liable to repay the Regular UI benefits she received. However, claimant is liable to have the Regular UI benefits she received during the weeks at issue deducted from any future benefits otherwise payable to her under ORS Chapter 657. Accordingly, following the offset performed by the Department, claimant is liable to have the \$3,408 she received in Regular UI benefits during the weeks at issue deducted from any future benefits otherwise payable to her under ORS Chapter 657 during the five-year period following the date decision # 115255 becomes final.

The record shows claimant applied for a waiver of this overpayment, but the Department cannot process the waiver request until this appeal is final. Following the date this appeal becomes final, the Department should give careful consideration to granting claimant's waiver request.

Repayment of PEUC Benefits. Under the provisions of the CARES Act of 2020, Pub. L. 116-136, claimant also received, following the offset performed by the Department, \$1,280 in PEUC benefits to

³ "Leaving work for self employment" is a specific circumstance that *per se* amounts to leaving work without good cause under the administrative rules. See OAR 471-30-0038(5)(b)(G) (effective December 23, 2018).

which she was not entitled because she did not qualify for benefits under state law as explained above. Pursuant to Pub. L. 116-136, § 2107(e)(2), 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 applied for a waiver but the Department cannot process the waiver request until this appeal is final.

Therefore, as claimant's waiver request is pending as of the date of this decision, claimant is liable for the overpayment of \$1,280 in PEUC benefits she received during the weeks at issue. Under Pub. L. 116-136, § 2107(e)(3), the Department may recover the PEUC benefits by deduction from any future PEUC 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 during the three-year period following the date decision # 115255 becomes final.

Following the date this appeal becomes final, the Department should give careful consideration to granting claimant's waiver request.

Repayment of FPUC Benefits. Under the provisions of the CARES Act, claimant also received, following the offset performed by the Department, \$4,800 in FPUC benefits to which she was not entitled because she did not qualify for benefits under state law as explained above. Pursuant to Pub. L. 116-136, § 2104(f)(2), 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 shows that claimant has applied for a waiver but the Department cannot process the waiver request until this appeal is final.

Therefore, as claimant's waiver request is pending as of the date of this decision, claimant is liable for the overpayment of \$4,800 in FPUC benefits she received during the weeks at issue. Under Pub. L. 116-136, § 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 during the three-year period following the date decision # 115255 becomes final.

Following the date this appeal becomes final, the Department should give careful consideration to granting claimant's waiver request.

In sum, claimant is liable for an overpayment of \$3,408 in Regular UI benefits to be deducted from future benefits only; for an overpayment of \$1,280 in PEUC benefits to be deducted from future benefits only; and for an overpayment of \$4,800 in FPUC benefits to be deducted from future benefits only.

DECISION: Order No. 22-UI-186243 is affirmed.

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

DATE of Service: April 22, 2022

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.