

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0569

Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On February 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain unemployment insurance benefits, and assessing a \$2,255.00 overpayment that claimant was required to repay to the Department, a \$45.30 monetary penalty, and a six-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On April 29, 2022, ALJ Mott conducted a hearing, and on May 3, 2022 issued Order No. 22-UI-192800, modifying the February 23, 2021 administrative decision by concluding that claimant was overpaid \$451.00 in benefits that he was required to repay to the Department, and assessing a \$22.65 monetary penalty and a one-week penalty disqualification from future benefits. On May 17, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: EAB has taken notice of claimant's responses on his weekly claim form for the week of August 16, 2020 through August 22, 2020 (week 34-20), which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). A copy of the information has been marked as EAB Exhibit 1 and provided to the parties with this decision. Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

FINDINGS OF FACT: (1) On March 29, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant had a monetarily valid claim and that claimant's weekly benefit amount (WBA) was \$151.00. Claimant subsequently filed weekly claims for the weeks including July 26, 2020 through August 29, 2020 (weeks 31-20 through 35-20), the weeks at issue. For each of the weeks at issue, the Department paid claimant \$151.00 in regular unemployment insurance (regular UI) and \$300.00 in Lost Wages Assistance (LWA) benefits. The Department paid claimant a total of \$2,255.00 in combined benefits for the weeks at issue.

(2) When an individual claims weekly benefits on the Department's online claims system, they are required to answer several questions regarding their employment circumstances. In relevant part, those questions include, "Did you quit a job last week?" (Question 2) and "Did you work last week or receive any vacation or holiday pay?" (Question 8). Exhibit 1 at 8. If an individual answers "yes" to Question 8, they are prompted to enter the numbers of hours they worked that week and their gross earnings for the week. Transcript at 9. Additionally, the weekly claim form includes fields for the individual to report their work-seeking activities for the week they are claiming. Prior to submitting the claim, the system requires individuals to verify that their responses on the weekly claim form are true and accurate.

(3) On July 23, 2020, claimant began working for the United States Census Bureau (the employer) as an enumerator. During the week of July 26, 2020 through August 1, 2020 (week 31-20), claimant worked 13.5 hours and earned \$243.00.

(4) On August 2, 2020, claimant filed his weekly claim for week 31-20. Claimant did not indicate on his weekly claim form that he worked or had earnings for that week.

(5) On August 6, 2020, claimant voluntarily quit working for the employer.

(6) On August 9, 2020, claimant filed his weekly claim for the week of August 2, 2020 through August 8, 2020 (week 32-20). Claimant did not indicate on his weekly claim form that he had voluntarily quit a job that week.

(7) On August 23, 2020, claimant filed his weekly claim for week 34-20. On the weekly claim form, claimant indicated that he had worked for the employer "roughly 20 hours total at 18 per hour before quitting due to delayed paychecks." EAB Exhibit 1. Claimant entered this information into the fields reserved for reporting work-seeking activities. The Department does not always review information entered into those fields.

(8) On August 24, 2020, the Department was notified via the National Directory of New Hires that claimant had recently been hired by the employer. The same day, the Department mailed a letter to claimant requesting information on his work for the employer, including his weekly hours and earnings, and, if he was no longer working for the employer, details of the work separation. On August 27, 2020, claimant responded to the letter by fax, indicating, in relevant part, that he had worked for the employer from July 23, 2020 until he quit, and that he "only worked 19 hours total at \$18 per hour." Exhibit 1 at 2. The Department received claimant's response to the letter.

(9) On February 19, 2021, the Department issued decision # 155949, concluding that claimant voluntarily quit working for the employer without good cause and was therefore disqualified from receiving benefits effective August 8, 2020. Claimant appealed decision # 155949, and a hearing was held on the matter. On May 2, 2022, the Office of Administrative Hearings issued an order which reversed decision # 155949 by concluding that claimant had voluntarily quit working for the employer with good cause, and therefore was not disqualified from receiving benefits based on that work separation.

CONCLUSIONS AND REASONS: Claimant was paid regular UI and LWA benefits that he was not entitled to receive and is liable to repay \$451 in benefits or have that amount deducted from future

benefits otherwise payable to him. However, claimant is not subject to penalty weeks or a monetary penalty.

Overpayment of 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.*

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).

During week 31-20, claimant worked for the employer and earned remuneration in the amount of \$243. Claimant's WBA was \$151. Because claimant earned more than his WBA during week 31-20, claimant was not "unemployed" during that week, and therefore was not eligible to receive benefits. As claimant was paid both \$151 in regular UI benefits and \$300 in LWA benefits during that week, claimant was overpaid \$451 in benefits, and, as the order under review correctly concluded, is liable to the Department for that overpayment. Order No. 22-UI-192800 at 6.

Additionally, the order under review correctly concluded that claimant was *not* overpaid benefits for any of the other weeks at issue. Order No. 22-UI-192800 at 6. The February 23, 2021 administrative decision assessed claimant an overpayment of \$1,804 in combined benefits (\$151 in regular UI benefits and \$300 in LWA benefits) for weeks 32-20 through 35-20 (August 2, 2020 through August 29, 2020). This overpayment amount was the result of the Department's conclusion in decision # 155949 that claimant had voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective August 2, 2020. As claimant prevailed in the hearing on decision # 155949, however, and was therefore found to have voluntarily quit work *with* good cause, claimant *was* eligible for benefits during those weeks. Therefore, claimant was not overpaid benefits for weeks 32-20 through 35-20, and is not liable to repay benefits paid to him during those weeks.

Misrepresentation. An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. An individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052 (January 11, 2018).

The order under review assessed both a monetary penalty and a penalty disqualification from future benefits (penalty weeks), concluding that claimant's failures to report his earnings on his claim for week 31-20 and his voluntary quit on his claim for week 32-20 constituted willful misrepresentations that claimant made in order to obtain benefits. Order No. 22-UI-192800 at 6. The order under review based this conclusion on the fact that claimant had been advised to provide truthful information on the weekly

claim form, as well as claimant's testimony that he "did not feel the need to report such information on his claim because he was 'getting ready to quit.'" Order No. 22-UI-192800 at 6. The record does not support the order's conclusion.

In order to assess either penalty weeks or a monetary penalty in connection with a misrepresentation of fact that leads to an overpayment of benefits, the record must show not merely that claimant made such a misrepresentation, but that he did so willfully for the purpose of obtaining benefits. First, the fact that claimant was advised by the online claims system to provide truthful information on the weekly claim forms is not sufficient evidence, without more, to conclude that his failure to do so constituted willful misrepresentation. An individual who merely misunderstands how to answer a question on a weekly claim form could easily make a misrepresentation of fact without intending to do so. In such a scenario, the fact that the individual was *advised* to provide truthful information is of no help to them, as they could incorrectly believe that they *are* providing truthful information. An individual who provides information that they incorrectly believe to be truthful has not made a willful misrepresentation of fact because they did not *intend* to misrepresent the facts.

Next, while claimant testified at hearing that he was "still getting ready to quit" in early August 2020, and that he did not report the earnings in week 31-20 or the voluntary quit in week 32-20 as a result, the statement does not, in context, clearly demonstrate that claimant *understood* that he was supposed to report those facts when he filed the respective weekly claims and failed to do so willfully in order to obtain benefits. In context, claimant testified:

Okay. But in my mind I was still getting ready to quit, so even if I had worked two more days or whatever, which I don't remember if I did or not. I don't remember the dates. Again, that was two years ago. I had already had in my mind that I was going to quit, so, and that I was basically jobless, so I didn't put anything down. And I had already updated that -- if I didn't update it previously, I updated it in the next week and let them know everything. So I'm sorry if they didn't get it until a week later, if they didn't read it until months later, but that's the only way you can communicate with the unemployment office is by weekly claims because they don't answer the phone.

Transcript at 24–25. It is not clear from claimant's testimony what he meant, and as such it is difficult to discern from this testimony a clear explanation of why he gave inaccurate information on the weekly claim forms. However, the record shows that on August 23, 2020, prior to any contact from the Department regarding his work for the employer or earnings during the weeks at issue, claimant reported on his weekly claim for week 34-20 that he had worked for the employer, the approximate number of hours he worked and rate at which he was paid, and that he had voluntarily quit on August 6, 2020.

It is not clear from the record why claimant chose that week to report the earnings or the work separation, or why he reported that information in the fields allocated for work-seeking activities rather than in response to the questions that directly asked if he had either worked that week or quit a job. In the absence of a clear explanation, and in light of the fact that he did so apparently unprompted by the Department's request for information on those matters, the record shows that, more likely than not, claimant either believed that this was an appropriate way to report the information, or was attempting to correct an earlier mistake that he had made. Thus, the evidence is equally balanced as to whether claimant willfully, to obtain benefits, failed to report the earnings and work separation issues, or whether

he merely did so negligently or mistakenly because he was unsure of how or when to report them. The Department bears the burden of proof to show that claimant's misrepresentations were willful.¹ Because the evidence is equally balanced, the Department has not met their burden. Therefore, the record shows that claimant's misrepresentations of fact were not made willfully for the purpose of obtaining benefits. As a result, claimant is not liable for either a monetary penalty under ORS 657.310(2) or a penalty disqualification from future benefits under ORS 657.215.

DECISION: Order No. 22-UI-192800 is modified, as outlined above.

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

DATE of Service: August 5, 2022

NOTE: This decision affirms, in part, an order regarding an overpayment of benefits. The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995, go online to www.workinginoregon.org/opay, or email OED_Overpayment_unit@employ.oregon.gov.

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.

¹ The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position. ORS 183.450(2).



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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