

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0571

Modified
Overpayment Reduced

PROCEDURAL HISTORY: On March 31, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant underreported earnings for the weeks of November 7, 2021 through November 27, 2021 (weeks 45-21 through 47-21), January 2, 2022 through January 15, 2022 (weeks 01-22 through 02-22) and January 30, 2022 through February 5, 2022 (week 05-22), and therefore was overpaid \$754 in benefits he was required to repay to the Department (decision # 193668). Claimant filed a timely request for hearing. On May 10, 2022, ALJ Lucas conducted a hearing at which the employer failed to appear, and on May 12, 2022 issued Order No. 22-UI-193535, affirming decision # 193668. On May 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On October 3, 2021, claimant filed his initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$733.

(2) Claimant claimed benefits for weeks 45-21 through 47-21, 01-22 through 02-22, and 05-22, the weeks at issue. The Department paid benefits to claimant for those weeks.

(3) Claimant reported on his weekly claims that he earned \$524.32, \$917.56, \$0.00, \$524.32, \$393.24, and \$458.78 during weeks 45-21, 46-21, 47-21, 01-22, 02-22, and 05-22, respectively. Exhibit 1 at 3. However, the employer later reported to the Department that claimant earned \$530.32, \$923.56, \$4,000.00, \$527.32, \$396.24, and \$461.78 during weeks 45-21, 46-21, 47-21, 01-22, 02-22, and 05-22, respectively. Exhibit 1 at 3. The discrepancy between the earnings that claimant reported and the work

earnings that the employer reported for weeks 45-21, 46-21, 47-21, 01-22, 02-22, and 05-22, was \$6, \$6, \$4000, \$3, \$3, and \$3, respectively. Exhibit 1 at 3.

(4) The reporting discrepancies for weeks 45-21, 46-21, 01-22, 02-22, and 05-22 were the result of mistakes that claimant made when he filed claims for those weeks. The discrepancy for week 47-21 was the result of claimant's failure to report a \$4,000 year-end bonus that the employer paid claimant that week for work he had performed through the prior year. Claimant did not otherwise perform work for the employer during week 47-21.

(5) Due to claimant's reporting errors, the Department determined that claimant was overpaid a total of \$21 in benefits for weeks 45-21, 46-21, 01-22, 02-22, and 05-22. Exhibit 1 at 3. Due to claimant's failure to report the \$4000 bonus he received during week 47-21, the Department determined that claimant was overpaid \$733 in benefits for that week. Exhibit 1 at 3. The Department therefore determined that the total overpayment in benefits claimant received for all of the weeks at issue was \$754. Exhibit 1 at 3.

CONCLUSIONS AND REASONS: Claimant was overpaid a total of \$175 in benefits for weeks 45-21, 46-21, 01-22, 02-22, and 05-22 that he is liable to repay to the Department or have deducted from any future benefits otherwise payable to him. Claimant was not overpaid benefits for week 47-21.

Remuneration. ORS 657.100 provides that an individual is "unemployed" if there are no earnings, or the earnings are less than the individual's weekly benefit amount. For purposes of applying ORS 657.100, "earnings" means remuneration. OAR 471-030-0017(1)(b) (January 11, 2018). Where an employer-employee relationship exists, "remuneration" means compensation from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips. OAR 471-030-0017(1)(c).

ORS 657.150(6) provides that an eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced by the amount of earnings paid or payable that exceeds whichever is the greater of the following amounts:

- (a) Ten times the minimum hourly wage established by the laws of this state; or
- (b) One-third of the individual's weekly benefit amount.

On September 1, 2020, the Oregon Governor signed Senate Bill 1701, which allowed claimants to earn \$300 in gross earnings during a week before having their weekly benefit amount reduced dollar-for-dollar by any amount earned over \$300 (hereinafter the "temporary rule"). This temporary change in the rules was effective September 6, 2020 through January 1, 2022 (weeks 37-20 through 52-21).¹

OAR 471-030-0017(3) states in relevant part that, for purposes of ORS 657.100 and 657.150(6), remuneration or an applicable pro-rata share thereof shall be allocated as follows:

¹ At hearing, the Department's witness addressed this "special rule" and its effect on the instant case. Transcript at 9-10.

* * *

(c) In the case of bonuses, allocated equally to the weeks during which the individual worked within the period being rewarded[.]

Claimant was overpaid benefits during some of the weeks at issue. At hearing, claimant acknowledged that it was “[his] mistake” that led to him underreporting his earnings for weeks 45-21, 46-21, 01-22, 02-22, and 05-22 by \$6, \$6, \$3, \$3, and \$3, respectively. Transcript at 14. Likewise, claimant testified that he did not realize that the \$4,000 year-end bonus he received during week 47-21 constituted reportable earnings that he needed to account for when reporting, and that he made a mistake in failing to do so. Transcript at 15.

The order under review affirmed decision # 193668 based on the lack of any dispute in the record that claimant underreported his earnings for the weeks at issue. Order No. 22-UI-193535 at 4-5. In so concluding, the order accepted the Department’s calculations that for weeks 45-21, 46-21, 47-21, 01-22, 02-22, and 05-22, claimant had been overpaid benefits for each week of \$6, \$6, \$733, \$3, \$3, and \$3, respectively, for a total of \$754. Order No. 22-UI-193535 at 5. However, while the record shows that the Department’s overpayment calculations for weeks 01-22, 02-22, and 05-22 were correct, the record also shows that the Department’s allocation, for earnings purposes, of the \$4,000 bonus claimant received during week 47-20 was incorrect. As a result, a modification to the overpayment amounts for weeks 45-21, 46-21, and 47-21 is necessary.

Specifically, the record shows that the \$4,000 bonus claimant received during week 47-21 was a year-end bonus for work performed by claimant throughout the prior year. Thus, in light of the fact that claimant did not work during week 47-21, the preponderance of the evidence shows that the bonus claimant received was for work he performed over the course of the preceding 52-week period (weeks 47-20 through 46-21). Because OAR 471-030-0017(3)(c) requires bonuses to be allocated equally to the weeks during which claimant worked within the period being rewarded, claimant’s \$4,000 bonus should have been allocated equally over the 52-week period spanning weeks 47-20 through 46-21. This results in an allocation of \$76.92 for each week claimant worked during that period. Applying this recalculated allocation to two of the relevant weeks at issue – weeks 45-21 and 46-21 – results in claimant having been overpaid benefits of \$83 for week 45-21² and \$83 for week 46-21³.

However, contrary to the conclusion reached by the order under review, claimant was not overpaid \$733 in benefits for week 47-21. Order No. 22-UI-193535 at 5. As previously noted, OAR 471-030-0017(3)(c) required that claimant’s \$4,000 year-end bonus be equally allocated over the weeks he

² The record shows that claimant earned \$530.32 during week 45-21, before adding the \$76.92 bonus allocation. Exhibit 1 at 3. Therefore, with the \$76.92 allocation added, claimant earned \$607.24 during week 45-21. Because claimant’s \$607.24 in earnings during week 45-21 was \$307.24 over the \$300 earnings cutoff provided by the temporary rule, his weekly benefit amount of \$733 must be reduced dollar-for-dollar by \$307.24. Thus, instead of receiving the \$508 in benefits he was paid (see exhibit 1 at 3), claimant should have received \$425, and was therefore overpaid \$83 in benefits for that week.

³ The record shows that claimant earned \$923.56 during week 46-21, before adding the \$76.92 bonus allocation. Therefore, with the \$76.92 allocation added, claimant earned \$1,000.48 during week 46-21. Because claimant’s \$1000.48 in earnings during week 46-21 was \$700.48 over the \$300 earnings cutoff provided by the temporary rule, his weekly benefit amount of \$733 was required to be reduced dollar-for-dollar by \$700.48. Thus, instead of receiving the \$115 in benefits he was paid (see exhibit 1 at 3), claimant should have received \$32, and was therefore overpaid \$83 in benefits for that week.

worked from weeks 47-20 through 46-21. However, the record shows that the Department incorrectly allocated the entire \$4,000 amount to week 47-21, a week during which claimant did not work for the employer. Therefore, claimant correctly reported earnings of \$0 for week 47-21, and the Department should not have allocated any portion of his bonus to that week. Because the record shows that claimant did not earn remuneration from the employer during week 47-21, he was eligible to receive, and was therefore not overpaid, his \$733 weekly benefit amount for that week.

In summary, the record shows that claimant was overpaid benefits for weeks 45-21, 46-21, 01-22, 02-22, and 05-22 in the amounts of \$83, \$83, \$3, \$3, and \$3, respectively, for a total overpayment of \$175, and was not overpaid benefits for week 47-21.

Overpayment. 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.*

Claimant was overpaid a total of \$175 in regular benefits for weeks 45-21, 46-21, 01-22, 02-22, and 05-22. Because claimant was paid benefits to which he was not entitled as result of his failure to disclose his correct earnings during those weeks, claimant is liable to repay the overpaid benefits to the Department or have the amount of the benefits deducted from any future benefits otherwise payable to him.

DECISION: Order No. 22-UI-193535 is modified, as outlined above.

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

DATE of Service: August 5, 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.

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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

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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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