

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0746

Order No. 22-UI-196307 ~ Affirmed – Late Request for Hearing Dismissed, Disqualification
Order No. 22-UI-196309 ~ Modified, Overpayment Assessed to be Deducted from Future Benefits
Payable Only

PROCEDURAL HISTORY: On January 11, 2021, 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 October 27, 2019 (decision # 161843). On February 1, 2021, decision # 161843 became final without claimant having filed a request for hearing. On April 13, 2022, the Department served notice of an administrative decision, based in part on decision # 161843, concluding that claimant failed to disclose a material fact and was paid benefits to which he was not entitled and assessing an overpayment of \$2,142 in regular unemployment insurance (regular UI) benefits, and \$8,400 in Federal Pandemic Unemployment Compensation benefits (FPUC) (decision # 112944). On May 2, 2022, claimant filed a late request for hearing on decision # 161843 and a timely request for hearing on decision # 112944. On June 14, 2022, ALJ Frank conducted hearings on decision # 161843, at which the employer failed to appear, and on decision # 112944. On June 16, 2022, ALJ Frank issued Order No. 22-UI-196307 dismissing claimant's request for hearing on decision # 161843 as late without good cause and leaving decision # 161843 undisturbed. Also on June 16, 2022, ALJ Frank issued Order No. 22-UI-196309 affirming decision # 112944. On June 30, 2022, claimant filed applications for review of Orders No. 22-UI-196307 and 22-UI-196309 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: On June 30, 2022, claimant submitted identical written arguments with his applications for review of Orders No. 22-UI-196307 and 22-UI-196309. EAB considered claimant's written arguments in reaching these decisions.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a letter, dated June 24, 2022, which claimant enclosed with his written argument and in which the employer states that claimant's work separation was due to claimant's position being eliminated rather than because of a voluntary resignation. This evidence is necessary to complete the record under OAR 471-041-0090(1)(a). The letter has been marked as EAB Exhibit 1, and a copy provided to the parties with this

decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-196307 and 22-UI-196309. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0746 and 2022-EAB-0747).

FINDINGS OF FACT: (1) On October 28, 2019, the employer, Les Schwab Warehouse Center Inc., eliminated claimant's position. The employer, who had employed claimant in that job for twelve years, did not offer claimant a different position and, as a result, claimant separated from work on October 28, 2019. Claimant did not voluntarily quit working for the employer. However, at the time of the work separation, the employer erroneously processed the separation in their system as a voluntary quit.

(2) On April 16, 2020, claimant filed an initial claim for regular UI benefits. When claimant filed his initial claim for benefits, he listed his work separation reason as a lack of work. The Department determined that claimant had a monetarily valid claim and established claimant's benefit amount at \$153 per week.

(3) Claimant claimed benefits for the weeks including April 12, 2020 through July 18, 2020 (weeks 16-20 through 29-20). These are the weeks at issue. The Department paid claimant a total of \$2,142 in regular UI benefits for the weeks at issue. The Department also paid claimant \$600 per week in FPUC benefits for a total of \$8,400 in FPUC benefits for the weeks at issue.

(4) The Department sent notice documents to the employer notifying them of claimant's initial claim. The employer returned these forms with brief written answers incorrectly stating that claimant separated from work because he voluntarily quit. The employer filled out the forms incorrectly because they had erroneously processed the separation in their system as a voluntary quit.

(5) The Department assigned an adjudicator to investigate the work separation. The adjudicator was unable to reach the employer for more information. On January 6, 2021, the adjudicator called claimant to interview him about the matter, but was unable to reach him, and left a voice mail instructing claimant to return the call within 48 hours. The adjudicator did not receive a call back from claimant and decided to render a decision on the work separation based solely on the information contained in the employer's returned notice forms, which incorrectly indicated that claimant had voluntarily quit.

(6) On January 11, 2021, the Department issued decision # 161843 concluding that claimant had voluntarily quit working for the employer without good cause and was disqualified from receiving benefits effective October 27, 2019. On or about January 15, 2021, claimant received decision # 161843 in the mail. Claimant tried numerous times to call the Department to request a hearing on decision # 161843 but could not reach a representative due to high call volumes and he eventually stopped trying to call the Department. Claimant did not try to request a hearing for decision # 161843 via mail or the internet. Decision # 161843 became final on February 1, 2021 without claimant having made a request for hearing.

(7) On April 13, 2022, the Department issued decision # 112944, based in part on decision # 161843, concluding that claimant failed to disclose that he had voluntarily quit working for the employer and assessing an overpayment of \$2,142 in regular UI benefits and \$8,400 in FPUC benefits. Claimant received decision # 112944 a few days after it was mailed, which prompted him to call the Department for more information. After numerous call attempts, claimant reached a representative on April 27, 2022, who gave claimant information on how to appeal decisions # 161843 and # 112944. On May 2, 2022, claimant filed a late request for hearing on decision # 161843 and a timely request for hearing on decision # 112944.

(8) Around the time claimant requested hearings on decisions # 161843 and # 112944, he contacted his former boss and asked why the employer would treat his work separation as a voluntary quit. Claimant's former boss expressed surprise and contacted the employer's human resources department for an explanation. The employer then recognized that they had processed claimant's work separation as a voluntary quit by mistake and corrected the error in their system.

(9) In May or June 2022, the employer contacted the Department and advised that claimant's position was eliminated and that claimant's work separation was initially processed in the employer's system as a voluntary quit by mistake.

(10) The Department did not issue a new administrative decision to correct the work separation.

CONCLUSIONS AND REASONS: Order No. 22-UI-196307, which dismissed claimant's late request for hearing on decision # 161843 and left undisturbed the administrative decision's conclusion that claimant voluntarily quit work without good cause and was disqualified from receiving benefits, is affirmed. Order No. 22-UI-196309 is modified. Claimant received \$2,142 in regular UI benefits and \$8,400 in FPUC benefits to which he was not entitled as a matter of law, based on the administrative decision. Claimant is liable to have the \$2,142 in regular UI benefits deducted from any future benefits otherwise payable to claimant during the five-year period following the date decision # 112944 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 him under any state or federal unemployment compensation law administered by the Department during the three-year period following the date decision # 112944 becomes final.

Order No. 22-UI-196307 – Late Request for Hearing and Voluntary Leaving. Based on a *de novo* review of the entire record in the case, and pursuant to ORS 657.275(2), Order No. 22-UI-196307, which dismissed claimant's late request for hearing on decision # 161843 and left undisturbed the administrative decision's conclusion that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective October 27, 2019, is **adopted**.

Order No. 22-UI-196309 – 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.

In contrast, under ORS 657.310(1),¹ if benefits to which the individual was not entitled 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, then the individual 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.

Order No. 22-UI-196309 concluded that claimant "was responsible for the overpayment" because when claimant listed his work separation reason as a lack of work on his initial claim, he "communicated [in]accurate information" to the Department. Order No. 22-UI-196309 at 4. As a result, the hearing order reasoned that ORS 657.310 governed the overpayment because, regardless of his knowledge or intent, claimant received benefits to which he was not entitled because he failed to disclose a material fact. Order No. 22-UI-196309 at 4. The record does not support the conclusion that ORS 657.310 was the correct law to be applied. Order No. 22-UI-196309 is modified because the record shows that the statute that applies to the overpayment is ORS 657.315, not ORS 657.310.

Claimant was paid regular UI benefits to which he was not entitled because, based on decision # 161843, which subsequently became final because it was not timely appealed, the conclusion that claimant voluntarily quit work without good cause, although inaccurate, became binding as a matter of law. Because decision # 161843 constitutes a binding legal conclusion, claimant was disqualified from receiving regular UI benefits pursuant to ORS 657.176(2)(c). As a result, the regular UI benefits claimant received during the weeks at issue were benefits to which he was not entitled. However, the record shows that the Department's overpayment to claimant was not due to claimant making a false statement on his initial claim for benefits. Rather, listing lack of work on claimant's initial claim was not false under the circumstance because the employer eliminated claimant's position and claimant did not actually quit working for the employer. Therefore, because the Department's error in overpaying claimant benefits was not due to claimant making a false statement, ORS 657.315 applies, and claimant is not liable to *repay* the regular UI benefits he received. However, claimant is liable to have the regular UI benefits he received during the weeks at issue *deducted* from any future benefits otherwise payable to him under ORS Chapter 657. Accordingly, claimant is liable to have the \$2,142 he received in Regular UI benefits during the weeks at issue deducted from any future benefits otherwise payable to him under ORS Chapter 657 during the five-year period following the date decision # 112944 becomes final.

Order No. 22-UI-196309 – Overpayment of FPUC Benefits. Under the provisions of the CARES Act, Pub. L. 116-136, claimant also received \$8,400 in FPUC benefits to which he was not entitled because he did not qualify for benefits under state law as explained above. *See* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) at I-7 ("If an individual is deemed ineligible for regular compensation in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created."). 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 does not show the Department has waived repayment here. Therefore, claimant

¹ Senate Bill 172 made certain changes to ORS 657.315 and 657.310 effective June 23, 2021. The portions of the statutes relevant to this decision were unchanged by the legislation.

is liable for the overpayment of \$8,400 in FPUC benefits he 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 claimant or from any future unemployment compensation payable to claimant under any state or federal unemployment compensation law administered by the Department during the three-year period following the date decision # 112944 becomes final.

Under ORS 657.290(1), the Department retains continuous jurisdiction to reconsider administrative decisions, based upon, among other things, “[f]acts not previously known to the [D]epartment[.]” The record shows that in May or June 2022, the employer contacted the Department and advised that claimant’s position was eliminated and that claimant’s work separation was originally processed in the employer’s system as a voluntary resignation by mistake. Because the Department has been made aware that claimant did not actually quit working for the employer, it should give careful consideration to canceling decisions # 161843 and 112944 and issuing new decisions. *See* EAB Exhibit 1.

Furthermore, in the event the Department declines to cancel and re-issue new administrative decisions in these proceedings, the Department should give careful consideration to granting a waiver of claimant’s overpayment, should claimant apply for a waiver. Information on how to make a request for waiver is included in a note at the end of this decision.

In sum, claimant is liable for an overpayment of \$2,142 in regular UI benefits to be deducted from future benefits during the five-year period following the date decision # 112944 becomes final; and for an overpayment of \$8,400 in FPUC benefits to be deducted from future benefits during the three-year period following the date decision # 112944 becomes final.

DECISION: Order No. 22-UI-196307 is affirmed. Order No. 22-UI-196309 is modified, as outlined above.

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

DATE of Service: August 2, 2022

NOTE: This decision modifies 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.



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

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.