

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0827

Reversed & Remanded
Revocada y Remitida Para Otra Audiencia

PROCEDURAL HISTORY: On June 9, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for waivers of an overpayment of regular unemployment insurance benefits (regular UI), Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wages Assistance (LWA) benefits that the Department had previously assessed on December 8, 2021 (decision # 120201). Claimant filed a timely request for hearing. On July 6, 2022, ALJ Frank conducted a hearing that was interpreted in Spanish, and on July 14, 2022 issued Order No. 22-UI-198302, affirming decision # 120201. On July 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 9 de junio de 2022, el Departamento de Empleo de Oregon (el Departamento) mandó por correo una decisión administrativa que denegaba la solicitud del reclamante de exenciones de unos sobrepagos de beneficios de desempleo regulares (UI regular), beneficios federales de Compensación por Desempleo Pandémico (FPUC), y beneficios de Asistencia por Salarios Perdidos (LWA) que que el Departamento había impuesto previamente en el 8 de diciembre de 2021 (decisión # 120201). La reclamante presentó una solicitud de audiencia oportuna. El 6 de julio de 2022, el juez administrativo (ALJ) Frank llevó a cabo una audiencia que fue interpretada al español, y el 14 de julio de 2022 emitió la Orden No. 22-UI-198302, confirmando la decisión # 120201. El 27 de julio de 2022, la reclamante presentó una solicitud de revisión de la Orden No. 22-UI-22-UI-198302 con la Junta de Apelaciones de Empleo (EAB).*

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the December 8, 2021 administrative decision assessing the overpayment for which claimant sought a waiver, and concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, which has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The additional evidence also consists of the August 5, 2020 administrative decision concluding that claimant voluntarily quit working for her employer without good cause (decision # 152820), which has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 or 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) On April 10, 2020, claimant filed an initial claim for regular UI benefits. When claimant filed her initial claim she stated that she had been laid off due to a lack of work from her employer.

(2) Claimant claimed and was paid regular UI and FPUC benefits for the weeks including April 5, 2020 through July 25, 2020 (weeks 15-20 through 30-20). Claimant claimed and was paid regular UI and LWA benefits for the week of July 26, 2020 through August 1, 2020 (week 31-20). Weeks 15-20 through 31-20 are the weeks at issue in this case. Claimant received \$5,100 in regular UI benefits, \$9,600 in FPUC benefits, and \$300 in LWA benefits for the weeks at issue.

(3) On August 5, 2020, the Department issued an administrative decision concluding that claimant had voluntarily quit working for her employer without good cause and was disqualified from receiving benefits effective March 29, 2020 (decision # 152820). EAB Exhibit 2. Claimant subsequently appealed the decision to the Office of Administrative Hearings (OAH), but failed to appear for the hearing set in the matter. On November 18, 2020, OAH dismissed the appeal for failure to appear with a December 8, 2020 deadline to appeal the dismissal to EAB. Claimant did not request to reopen the hearing or file an application for review of the matter with EAB.

(4) On December 8, 2021, the Department issued an administrative decision assessing an overpayment against claimant in the amount of \$17,205, which reflected the amounts claimant received in regular UI benefits, FPUC benefits, and LWA benefits, plus a \$2,205 monetary penalty. EAB Exhibit 1 at 4. The December 8, 2021 administrative decision found that claimant certified that she was laid off due to a lack of work when she actually voluntarily quit working for her employer, as determined by decision # 152820. EAB Exhibit 1 at 4. Based on this finding, the December 8, 2021 administrative decision concluded that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits. EAB Exhibit 1 at 4.

(5) On December 14, 2021, claimant filed a timely request for hearing of the December 8, 2021 administrative decision with OAH. EAB Exhibit 1 at 2. The hearing referral was received by OAH, was assigned a case number, and was placed in an "Open" case status.¹ As of the date of this decision, no hearing has been held on claimant's appeal of the December 8, 2021 administrative decision.

(6) On December 22, 2021, claimant submitted a waiver request to the Department relating to the \$17,205 overpayment assessed by the December 8, 2021 administrative decision.

CONCLUSIONS AND REASONS: Order No. 22-UI-198302 is set aside, and this matter remanded for further proceedings consistent with this order.

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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.

CONCLUSIONES Y RAZONES: *La Orden No. 22-UI-198302 se pone a un lado, y esta materia se remite para otra audiencia.*

Under ORS 657.317(2)(a), the Department “may waive recovery of all or any part of overpaid benefits subject to repayment or deduction under ORS 657.310(1) or 657.315(1)” if the Department finds “that recovery of the benefits would be against equity and good conscience.” Under ORS 657.317(2)(b), the Department may not waive recovery of overpaid benefits that are subject to the penalty imposed under ORS 657.310(2). ORS 673.310(2) provides for the assessment of monetary penalties when an overpayment results from an individual having willfully made a misrepresentation to obtain benefits pursuant to ORS 657.215.

Recovering overpaid benefits is against equity and good conscience if: (1) the person requesting a waiver has “no means to repay the benefits,” and (2) “has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits.” OAR 471-030-0053(2) (effective January 11, 2018). The Department uses the IRS Collection Financial Standards to determine maximum allowable household expenses. OAR 471-030-0053(2).

However, Oregon temporary rules address unemployment insurance provisions applicable to the unique situations arising from COVID-19. Temporary OAR 471-030-0070(6) (effective March 8, 2020 through September 12, 2020) states:

ORS 657.315(2) permits the waiver of overpayment recoveries if the overpayment was not caused in any way by the claimant and if recovery would be against equity and good conscience. Notwithstanding OAR 471-030-0053, for benefits paid for weeks starting with the week ending March 28, 2020, given the economic conditions created by the coronavirus and measures taken to mitigate its spread, it would be against equity and good conscience to recover these overpayments. Recovery efforts may be resumed after emergency declarations related to the coronavirus expire or otherwise are no longer in effect.

Waiver of recovery of overpayments received from federal benefits programs are governed by a similar, yet different, body of law. Waiver of FPUC overpayments are governed by the provisions of Section 2104(f)(2)(A)-(B) of the CARES Act, Pub. L. 116-136, which requires, for waiver to be granted, that the overpayment of FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. Section 262(b) of the Continued Assistance for Unemployed Workers Act of 2020 sets forth the same elements for waiver of overpayments of LWA benefits. The federal standard provides that recovery is “contrary to equity and good conscience” when one of at least three circumstances are present. Those circumstances are: (1) recovery would cause financial hardship to the person from whom it is sought; (2) the recipient of the overpayment can show (regardless of their financial situation) that due to the notice that such payment would be made or because of the incorrect payment, either they have relinquished a valuable right or changed positions for the worse; or (3) recovery would be unconscionable under the circumstances. Unemployment Insurance Program Letter 20-21, Change 1 (February 7, 2022) at 10-13.

The order under review found that the December 8, 2021 administrative decision—the decision that concluded that claimant willfully made a misrepresentation on her initial claim and failed to report a

material fact to obtain benefits—was final and binding. Order No. 22-UI-198302 at 2, ¶ 3. The record does not support that finding of fact. Based on the unsupported finding of fact, the order under review concluded that claimant had received the overpaid benefits based on a willful misrepresentation and therefore was at fault for the overpayment and not eligible for a waiver. Order No. 22-UI-198302 at 2. The record as developed does not support that conclusion.

The December 8, 2021 administrative decision was timely appealed by claimant and is pending before OAH, presumably awaiting to be assigned a hearing date. As such, it is not correct to regard the December 8, 2021 administrative decision as final and binding. Instead, whether or not claimant willfully misrepresented the nature of the work separation on her initial claim to obtain benefits is an unsettled matter. Once a hearing is held on the December 8, 2021 administrative decision, the ALJ might conclude that no willful misrepresentation was made, in which case claimant likely would not be considered to have been at fault for the overpayment. If claimant was not at fault for the overpayment, she may be eligible for a waiver.

Remand is necessary to develop the record regarding whether claimant was at fault for the overpayment. On remand, OAH should consolidate this case with claimant’s appeal of the December 8, 2021 administrative decision. At the remand hearing, the ALJ should ask questions to determine whether claimant reported incorrect information on her initial claim willfully to obtain benefits or because of some other reason, such as by mistake. To this end, the ALJ should inquire whether claimant reported incorrect information due to difficulties relating to education, literacy, or language barriers that interfered with understanding what information was being requested. If the record shows that claimant did not make a willful misrepresentation to obtain benefits or otherwise was at fault, the ALJ should ask questions to determine whether recovery of the overpayment would be against equity and good conscience by tailoring the questioning to the authorities cited above.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant’s overpayment waiver request should be granted, Order No. 22-UI-198302 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-198302 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 22-UI-198302 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: October 28, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-198302 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

***NOTA:** La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 22-UI-198302, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.*

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Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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