

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0929

Amended Order No. 22-UI-201042 Reversed
Order No. 22-UI-187931 Remains Undisturbed

PROCEDURAL HISTORY: On June 8, 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 an overpayment of \$5,832 in regular unemployment insurance (regular UI) benefits and \$5,400 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$1,749.60 monetary penalty, and a nine-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On February 25, 2022, ALJ S. Lee conducted a hearing, and on March 4, 2022 issued Order No. 22-UI-187931, modifying the June 8, 2021 administrative decision by concluding that claimant was overpaid \$5,832 in regular UI benefits and \$5,400 in FPUC benefits that claimant was **not** liable to repay to the Department; and that claimant had not willfully made a misrepresentation to obtain benefits, and therefore was not liable for a monetary penalty or a penalty disqualification from future benefits (emphasis added). On March 24, 2022, Order No. 22-UI-187931 became final without any party having filed an application for review with the Employment Appeals Board (EAB).

On August 23, 2022, ALJ S. Lee issued Amended Order No. 22-UI-201042, correcting a typographical error in Order No. 22-UI-187931 to conclude that claimant was overpaid \$5,832 in regular UI benefits and \$5,400 in FPUC benefits that claimant **was** liable to repay to the Department; and that claimant had not willfully made a misrepresentation to obtain benefits, and therefore was not liable for a monetary penalty or a penalty disqualification from future benefits (emphasis added). On September 4, 2022, claimant filed a timely application for review of Amended Order No. 22-UI-201042 with EAB.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that this information was relevant and material to EAB's determination as required by OAR 471-041-0090(1)(b)(A) (May 13, 2019). Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On March 4, 2022, ALJ S. Lee issued Order No. 22-UI-187931. The “Conclusions of Law” section of that order stated, in relevant part, that “claimant was overpaid benefits and is now liable to repay those amounts to the Employment Department.” Order No. 22-UI-187931 at 7. The order also reasoned that “while claimant is still liable to repay the benefits overpaid, she is not subject to penalties.” Order No. 22-UI-187931 at 7. The “Order” section of that order stated, in relevant part, “The Employment Department did overpay claimant unemployment benefits in the amount of \$5,832 and FPUC benefits of \$5,400 which claimant is **not** liable to repay to the Employment Department under ORS 657.310 and applicable federal statutes and rules.” Order No. 22-UI-187931 at 7–8 (emphasis added).

(2) On March 24, 2022, Order No. 22-UI-187931 became final without the Department or either party having filed an application for review with EAB.

(3) On August 23, 2022, ALJ S. Lee issued Amended Order No. 22-UI-201042, which amended Order No. 22-UI-187931 to correct an apparent typographical error which stated that claimant was *not* liable to repay the overpaid benefits to the Department. Order No. 22-UI-187931 at 8; Amended Order No. 22-UI-201042 at 8.

CONCLUSIONS AND REASONS: The ALJ lacked jurisdiction to issue Amended Order No. 22-UI-201042. Order No. 22-UI-187931 remains undisturbed.

ORS 657.270(6) states, in relevant part, that the decision of an administrative law judge is final unless the Department or any other party to the hearing files an application for review with the Employment Appeals Board within 20 days after the delivery of the notice under ORS 657.270(4), or if mailed, within 20 days after the notice was mailed to the party’s last-known address. OAR 471-040-0030(5) (August 1, 2004) states, in relevant part, that an administrative law judge may issue an amended decision prior to the previous decision becoming final.

Due to a typographical error, Order No. 22-UI-187931 contradicted itself by concluding that claimant was liable to repay to the Department the overpaid benefits assessed by the June 8, 2021 administrative decision, and by also ordering that claimant was not liable to repay the overpaid benefits to the Department.¹ In an apparent effort to resolve that contradiction, several months after the original order became final, the ALJ issued the amended order under review, which corrected the typographical error in the original order. The record does not show when or how the ALJ became aware of the error, or why it took so long to issue the amended order. Nevertheless, the ALJ lacked jurisdiction to issue the amended order because it was not issued before the original order became final.

Under OAR 471-040-0030(5), an ALJ may issue an amended order prior to the previous decision becoming final. There is no indication in the record that any party, including the Department, filed an application for review of the original order, Order No. 22-UI-187931, within the 20 days permitted by ORS 657.270(6), or at any later time. Order No. 22-UI-187931 therefore became final on March 24, 2022. Nor does the record show that Order No. 22-UI-187931 was amended prior to becoming final on March 24, 2022. Because the ALJ did not issue the amended order until nearly five months after the

¹ The consequences of the contradiction in the original order are unclear. However, because an application for review of that order has not been filed, the matter is outside of EAB’s scope of review. *See* ORS 657.275; OAR 471-041-0060 (May 13, 2019).

original order became final, the ALJ lacked jurisdiction to issue the amended order. As such, Amended Order No. 22-UI-201042 is reversed for lack of jurisdiction, and Order No. 22-UI-187931 remains undisturbed.

DECISION: Amended Order No. 22-UI-201042 is set aside. Order No. 22-UI-187931 remains undisturbed.

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

DATE of Service: December 2, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

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