

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0931

Modified
FPUC Overpayment Waiver Granted

PROCEDURAL HISTORY: On February 2, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for a waiver of a \$29,638.20 overpayment that the Department had previously assessed on December 17, 2021 (decision # 115816). Claimant filed a timely request for hearing. On August 9, 2022, ALJ Janzen conducted a hearing that was interpreted in Amharic, and on August 17, 2022 issued Order No. 22-UI-200732 modifying decision # 115816 by concluding that claimant's waiver request should be granted as to claimant's \$1,443.00 overpayment of regular unemployment insurance (regular UI) benefits, but not as to claimant's \$3,000.00 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits.¹ On September 6, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's October 3, 2022 written argument when reaching this decision. Because claimant's November 21, 2022 argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (May 13, 2019), that argument was not considered by EAB when reaching this decision. OAR 471-041-0080(2)(b).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that the Department is required to waive claimant's \$1,443.00

¹ A companion hearing order, Order No. 22-UI-200625, modified claimant's overpayment from a total of \$29,638.20 (which included benefits overpaid from various state and federal programs, plus a monetary penalty) to a \$1,443.00 overpayment of regular UI benefits and a \$3,000.00 overpayment of FPUC benefits. Order No. 22-UI-200625 at 5. Order No. 22-UI-200732 took notice of Order No. 22-UI-200625. Order No. 22-UI-200732 at 2, n.2.

regular UI overpayment is **adopted**. The remainder of this decision relates to claimant's entitlement to a waiver of her \$3,000.00 FPUC overpayment.

FINDINGS OF FACT: (1) On January 7, 2020, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant claimed and was paid benefits for numerous weeks beginning in mid-April 2020 through early June 2021.

(2) For each of the weeks that claimant claimed benefits, claimant completed a weekly certification form that, among other things, requested claimant to list the amount of earnings she earned during the week claimed.

(3) The weekly certification forms were confusing to claimant because they were not available in Amharic, which was claimant's primary language. Claimant was not fluent in English and understood only some of what she read in English.

(4) For each of the weeks that claimant claimed benefits, she did not have her paystub for the week she was claiming and therefore had to estimate her earnings, as she did not know exactly how much she had earned.

(5) As a result of her limited English proficiency and need to estimate earnings, claimant reported some inaccurate earnings information on the certification forms for some of the weeks she claimed. For five of these weeks, claimant's failure to report accurate earnings caused her to receive regular UI benefits to which she was not entitled. Because she received regular UI benefits to which she was not entitled for each of those weeks, she received \$600.00 in FPUC benefits to which she was not entitled for each of those weeks as well. All told, claimant was overpaid \$3,000.00 in FPUC benefits.

(6) Claimant earned \$1,200.00 per month. Claimant paid \$1,150.00 per month in rent, and had monthly transportation costs of about \$200.00. Claimant would not have any money to pay the \$3,000 FPUC overpayment if she were required to do so.

CONCLUSIONS AND REASONS: Order No. 22-UI-200732 is modified. The portion of the order under review that concluded that claimant was not entitled to a waiver of her \$3,000.00 FPUC overpayment is reversed. The Department is required to waive claimant's \$3,000.00 FPUC overpayment.

Waiver of FPUC overpayments are governed by the provisions of Section 2104(f)(2)(A)-(B) of the CARES Act, 15 U.S.C. § 9023(f), 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. Federal guidance provides that, in general, "an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility." Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022). However, "a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state . . . or other similar difficulties (e.g., education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]" UIPL 20-21 Change 1, at 10.

With respect to the “contrary to equity and good conscience” element, federal guidance provides that states may defer to state law in defining what it means for repayment to be contrary to equity and good conscience, or may use the federal standard. UIPL 20-21 Change 1, at 10. 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. UIPL 20-21 Change 1, at 10-13. The guidance elaborates that recovery would cause financial hardship where “review of the individual’s income to debts (including copies of pay records and bills) reflects the hardship caused by having to repay an overpayment because the individual needs much of their current income and liquid assets (including the CARES Act benefits received) to meet ordinary and necessary living expenses and liabilities.” UIPL 20-21 Change 1, at 11.

The order under review concluded that claimant was not entitled to a waiver of her \$3,000.00 FPUC overpayment because claimant “was not ‘without fault’ in causing the overpayment of FPUC, because it was claimant’s incorrect reports that led to her overpayment.” Order No. 22-UI-200732 at 5. The record does not support this conclusion.

Claimant is entitled to a waiver of her \$3,000.00 FPUC overpayment because the record shows that the overpayment of FPUC benefits were without fault on the part of the claimant, and that repayment would be contrary to equity and good conscience. Under UIPL 20-21 Change 1, an FPUC overpayment may be without fault on the part of an individual if the individual gave incorrect information because of confusing instructions or similar difficulties, such as language barriers. That is what occurred here. Amharic was claimant’s primary language, and the weekly certification forms were not available in that language. Because of claimant’s limited English proficiency and need to estimate earnings, claimant reported inaccurate earnings information on the certification forms for some of the weeks she claimed, which resulted in the \$3,000.00 FPUC overpayment. Because claimant’s submission of incorrect information was due in substantial part to a language barrier, the record evidence is sufficient to meet the “without fault” element of the federal overpayment waiver standard.

The record likewise shows that repayment of the \$3,000.00 FPUC overpayment would be contrary to equity and good conscience. Although, under UIPL 20-21 Change 1, the Department had the option to use either the state standard or the federal standard in defining what it means for repayment to be contrary to equity and good conscience, the record is silent as to which approach the Department selected. In the absence of evidence to the contrary, it is reasonable to conclude that the Department opted to apply the federal standard given that the FPUC program is a federal benefits program. Applying the federal approach, the record shows that repayment would be contrary to equity and good conscience because recovery would cause financial hardship to claimant. Claimant earned only \$1,200.00 per month, but had monthly debts (i.e., expenses) totaling about \$1,350.00 per month. In light of claimant’s income-to-debt ratio, which shows that her debt exceeded her income, requiring her to repay the \$3,000.00 FPUC overpayment would cause her a financial hardship.

For these reasons, Order No. 22-UI-200732 is modified. The portion of the order that concluded that claimant was not entitled to a waiver of her \$3,000.00 FPUC overpayment is reversed. The Department is required to waive claimant’s \$3,000.00 FPUC overpayment.

DECISION: Order No. 22-UI-200732 is modified, as outlined above.

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

DATE of Service: December 1, 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 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.

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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.