

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1153

Modified
Late Request for Hearing Allowed
No Overpayment, No Monetary Penalty
Four-Week Penalty Disqualification

PROCEDURAL HISTORY: On February 27, 2020, 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 benefits, and assessing a \$1,395 overpayment of regular unemployment insurance benefits, a \$209.25 monetary penalty, and an 18-week penalty disqualification from future benefits (decision # 194105). On March 18, 2020, decision # 194105 became final without claimant having filed a request for hearing. On July 27, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 14, 2022, issued Order No. 22-UI-186337, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 28, 2022. On February 22, 2022, claimant filed a timely response to the appellant questionnaire. On May 5, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-186337 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 194105. On October 7, 2022, ALJ Scott held a hearing, and on November 2, 2022, issued Order No. 22-UI-206467, allowing claimant's late request for hearing and modifying decision # 194105 by concluding that claimant willfully made a misrepresentation to obtain benefits, but was not paid benefits to which he was not entitled, was not subject to a monetary penalty, and was not subject to a penalty disqualification from future benefits. On November 21, 2022, the Department filed an application for review of Order No. 22-UI-206467 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the Department's written argument in reaching this decision.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing is **adopted**. Further, the portion of the order under review concluding that claimant was not paid benefits to which he was not entitled and is not liable for an overpayment or monetary penalty, is also **adopted**. This decision will address whether claimant is subject to a penalty disqualification under ORS 657.215 for willfully making a false statement to obtain benefits, the Department's only assignment of error.

FINDINGS OF FACT: (1) On January 6, 2020, claimant filed an application for regular unemployment insurance benefits in which he stated that he had been laid off from his most recent employment for lack of work.

(2) Claimant knew that he voluntarily quit working for his most recent employer but stated in his application for benefits that he had been laid off for lack of work. He did so because he believed falsely stating that he was laid off for lack of work would improve his chances of being granted benefits because he thought reporting a voluntary quit would result in an automatic disqualification from benefits.

(3) On February 20, 2020, the Department issued administrative decision # 143840, which related to claimant's work separation from his most recent employer. Decision # 143840 concluded that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits.

(4) On November 1, 2022, ALJ Scott issued Order No. 22-UI-206357, setting aside decision # 143840 and concluding that claimant voluntarily left work with good cause and was not disqualified from receiving benefits based on the work separation. Order No. 22-UI-206357 has since become final.

CONCLUSIONS AND REASONS: Claimant is subject to a four-week penalty disqualification.

ORS 657.215 requires that an individual be disqualified from receiving benefits for up to 52 weeks if the individual "willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits under this chapter." OAR 471-030-0052 (January 11, 2018) provides in relevant part:

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

By reporting that he was laid off for lack of work when he had actually voluntarily quit, claimant willfully misrepresented the nature of the work separation. He did so to obtain benefits because he believed that falsely stating that he had been laid off would improve his chances of being granted benefits. Therefore, ORS 657.215 applies to this case and claimant is liable for a penalty disqualification from benefits.

Here, however, claimant was not overpaid benefits as a result of his false statement because his work separation was ultimately determined not to be disqualifying, despite his misrepresentation. Nevertheless, claimant willfully made a misrepresentation to obtain benefits and calculation of the penalty disqualification is not contingent upon whether claimant was overpaid. OAR 471-030-0052(1)(b) must be used to calculate the length of the penalty disqualification because claimant's misrepresentation related to the provisions of ORS 657.176. ORS 657.176 involves disqualifications because of work separations such as voluntarily leaving work without good cause. *See* ORS 657.176(2)(c). Therefore, under OAR 471-030-0052(1)(b), the number of weeks of disqualification is the number of weeks calculated via the manner set forth by OAR 471-030-0052(1)(a), or four weeks, whichever is greater.

Since claimant was not overpaid, calculating the penalty weeks via the manner set forth by OAR 471-030-0052(1)(a) yields a calculation of zero weeks. Four weeks are greater than zero weeks. Accordingly, pursuant to ORS 657.215 and OAR 471-030-0052(1)(b), claimant is subject to a 4-week penalty disqualification from future benefits.

Claimant made a willful misrepresentation to obtain benefits, but was not overpaid. He is subject to a four-week penalty disqualification from future benefits.

DECISION: Order No. 22-UI-206467 is modified, as outlined above.

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

DATE of Service: January 25, 2023

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 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.

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.