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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2022-EAB-1206</p>
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Reversed & Remanded

PROCEDURAL HISTORY: On May 17, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective March 29, 2022. On May 18, 2022, the Department served notice of an administrative decision, based in part on the May 17, 2022 PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$12,505 overpayment of PUA benefits, a \$17,100 overpayment of Federal Pandemic Unemployment Compensation (FPUC) Benefits, a \$1,800 overpayment of Lost Wages Assistance (LWA) benefits, and a \$4,440.75 monetary penalty. Claimant filed a timely request for hearing on the decisions. On October 3, 2022, ALJ Roberts conducted a consolidated hearing on the May 17, 2022 PUA determination and May 18, 2022 administrative decision, which was continued on October 24, 2022, November 8, 2022, and November 10, 2022. On November 18, 2022, ALJ Roberts issued Order No. 22-UI-207710, affirming the May 17, 2022 administrative decision. Also on November 18, 2022, ALJ Roberts issued Order No. 22-UI-207746, modifying the May 18, 2022 administrative decision by concluding that claimant willfully made false statements and a misrepresentation to the Department in order to obtain benefits, and assessing a \$29,100 overpayment in combined PUA and FPUC benefits, a \$1,800 LWA overpayment, and a \$4,365 monetary penalty. On December 5, 2022, claimant filed applications for review of Orders No. 22-UI-207710 and 22-UI-207746 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-207710 and 22-UI-207746. For case-tracking purposes, this decision is being issues in duplicate (EAB Decisions 2022-EAB-1206 and 2022-EAB-1207).

WRITTEN ARGUMENT: EAB considered claimant's argument when reaching this decision. Claimant's argument contained information that was not part of the hearing record. EAB considered this information as necessary to complete the record. OAR 471-041-0090(1)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On October 3, 2022, ALJ Roberts began a consolidated hearing on the May 17, 2022 PUA determination and the May 18, 2022 administrative decision. The hearing was postponed to October 24, 2022, because claimant had not received documents from the Department.

(2) On October 24, 2022, ALJ Roberts continued the October 3, 2022 hearing. The department's representative was disconnected from the hearing because of connectivity issues. The representative was unable to rejoin the hearing and the hearing was postponed until a time he could participate.

(3) On November 8, 2022, ALJ Roberts continued the October 24, 2022 hearing. Due to an emergency, the Department's representative could not appear for this hearing. The hearing was postponed so the Department's representative could participate in the hearing.

(4) On November 10, 2022, at 12:00 p.m. ALJ Roberts continued the November 8, 2022 hearing. Claimant was disconnected from this hearing multiple times because of connectivity issues. Claimant was able to rejoin the hearing twice. Around 12:45 p.m., claimant was disconnected from the hearing a third time due to connectivity issues. Claimant attempted to reconnect to the hearing, but was unable to rejoin. Claimant's Written Argument. At 12:48 p.m., claimant called the Office of Administrative Hearings (OAH) and left a voicemail stating she tried to call back into the hearing, but was unable to reconnect. Order 22-UI-207746 at 1. Around 1:04 p.m., ALJ Roberts continued the hearing without claimant present. Audio Record at 1:03:58. The hearing concluded around 2:05 p.m. without claimant having rejoined.

CONCLUSION AND REASONS: Orders No. 22-UI-207746 and 22-UI-207710 are set aside, and this matter is remanded for further proceedings consistent with this order.

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).

Claimant was disconnected three times during the November 10, 2022 hearing due to connectivity issues. The first two times claimant was disconnected, claimant was able to reconnect to the hearing without incident. The third time claimant was disconnected, claimant was unable to reconnect to the hearing. Claimant was disconnected as the ALJ was questioning the Department's witness. The record shows that claimant attempted to call back in again, was unable to do so, and proceeded to call OAH and leave a message notifying them that she had not been able to reconnect. Claimant's Written Argument, Order No 22-UI-207746 at 1. Claimant's attempt to call back into the hearing and the message she left with OAH demonstrate a sincere effort to participate in the hearing.

A full and fair inquiry requires that claimant be given an opportunity to rebut the Department's evidence and offer her own evidence. The hearing continued for an hour and twenty minutes after claimant was disconnected from the call, and claimant had no opportunity to hear and rebut the Department's evidence. Further, claimant and her potential witness were not able to offer evidence on claimant's behalf. Claimant was denied this opportunity because of connectivity issues outside of her control. On October 24, 2022 when the Department's representative had connectivity issues and was unable to reconnect to the call the hearing was postponed. Claimant should be afforded the same opportunity to

participate in the hearing. Remand is therefore required to develop the record as to whether claimant was eligible for PUA benefits, whether she was overpaid benefits, and whether she willfully misrepresented a fact to the Department in order to obtain benefits.

DECISION: Orders No. 22-UI-207746 and 22-UI-207710 are set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 6, 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.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-207746 and 22-UI-207710 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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