

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0214

Reversed
Overpayment Waivers Denied

PROCEDURAL HISTORY: On August 3, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's requests for regular unemployment insurance (regular UI) and Federal Pandemic Unemployment Compensation (FPUC) overpayment waivers (decision # 150149). Claimant filed a timely request for hearing. On January 31, 2023, ALJ Scott conducted a hearing, and on February 2, 2023 issued Order No. 23-UI-214650, reversing decision # 150149 by granting claimant's request for the regular UI and FPUC overpayment waivers. On February 13, 2023, the Department filed an application for review with the Employment Appeals Board (EAB).

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

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 administrative decision that established claimant's Regular UI and FPUC overpayments, which has been marked as EAB Exhibit 1, and the administrative decision in this case, decision # 150149, which has been marked as EAB Exhibit 2. Copies of EAB Exhibit 1 and 2 are being provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 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 March 18, 2020, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant claimed benefits for several weeks in 2020 through the first week of 2021.

(2) On January 15, 2021, claimant separated from work from her employer. Thereafter, claimant claimed benefits for the weeks from January 10, 2021 through March 13, 2021 (weeks 02-21 through 10-21). These are the weeks at issue. Claimant received \$2,745 in regular UI benefits and \$2,700 in FPUC benefits for the weeks at issue.

(3) When claimant claimed benefits for the week of January 10, 2021 through January 16, 2021 (week 02-21), she did not report on her weekly claim form that she had separated from work from her employer. Claimant did not do so because she believed the employer had reduced her hours but that she was continuing to work for the employer.

(4) The Department received a notice document from claimant's employer indicating claimant had quit work. The Department subsequently adjudicated claimant's January 15, 2021 work separation. On June 22, 2021, the Department issued an administrative decision concluding that claimant had quit working for the employer without good cause and was disqualified from receiving benefits effective January 10, 2021. The quit decision became final without claimant appealing it in a timely manner.

(5) On May 31, 2022, the Department issued an overpayment administrative decision, which was based on the quit decision. EAB Exhibit 1 at 1. The overpayment decision concluded that claimant had received \$2,745 of regular UI benefits and \$2,700 of FPUC benefits to which she was not entitled because she failed to disclose that she had voluntarily left work. EAB Exhibit 1 at 1. The overpayment decision became final without claimant appealing it in a timely manner.

(6) On July 21, 2022, claimant filed late requests for hearing on the quit decision and the overpayment decision. The Office of Administrative Hearings (OAH) dismissed claimant's requests for hearing as late subject to claimant's right to renew the requests by filing a response to an appellant questionnaire within 14 days of the dismissal dates. OAH did not receive a response to the appellant questionnaire from claimant.

(7) On July 27, 2022, claimant submitted a requests waivers of the regular UI and FPUC overpayments. Claimant's total household income was \$4,005.00 per month. In her waiver requests, claimant mistakenly reported her total household income as \$9,005.00 per month because she included her roommate's income in the amount she reported. Claimant's total monthly household expenses were \$3,498.49.

(8) Based on the information claimant reported in her waiver requests, the Department conducted an analysis of claimant's monthly debt-to-income ratio and determined that recovery of claimant's regular UI and FPUC overpayments was not against equity and good conscience. For that reason, the Department denied claimant's waiver requests.

CONCLUSIONS AND REASONS: Order No. 23-UI-214650 is reversed. Claimant is not entitled to waiver of her Regular UI and FPUC overpayments.

The order under review concluded that claimant was entitled to waiver of her Regular UI and FPUC overpayments. Order No. 23-UI-214650 at 6-7. The record does not support that conclusion.

As an initial matter, it bears noting that claimant disputed at hearing that she quit working for her employer in January 2021 or that she separated from the employer at all until April 2021. Audio Record at 19:57 to 20:39; 30:49 to 31:14. However, because the voluntary quit decision and the overpayment decision were not timely appealed and became final, the conclusions contained in them became binding as a matter of law. Therefore, the legal conclusions that claimant quit work without good cause and was

disqualified from receiving benefits and caused an overpayment by failing to disclose when claiming benefits that she had voluntarily left work are binding regardless of claimant's testimony to the contrary.

Regular UI Overpayment Waiver. 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." Per 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. The effect of these statutes is that waiver is not available for fraud-type overpayments, *i.e.*, overpayments in which an individual willfully makes a misrepresentation to obtain benefits per ORS 657.310(2) and ORS 657.215. However, overpayments that are due to claimant fault but are non-fraud (*i.e.*, are subject to recovery under ORS 657.310(1)) and overpayments that are not due to claimant fault (*i.e.*, are subject to recovery under ORS 657.315) may be waived so long as recovery of the benefits would be against equity and good conscience.

Review of the overpayment decision that established claimant's \$2,745 regular UI overpayment confirms that claimant's overpayment is not a fraud-type overpayment. Rather, the premise of the overpayment decision is that the overpayment was due to claimant's fault but was non-fraud. This is evident because, although the overpayment decision states that claimant failed to disclose the material fact that she had voluntarily left work, it does not state that she willfully did so to obtain benefits, as would be the case if it were a fraud decision issued pursuant to ORS 673.310(2) and ORS 657.215. EAB Exhibit 1 at 1. Nor does the overpayment decision assess a monetary penalty per ORS 673.310(2) or penalty weeks per ORS 657.215. EAB Exhibit 1 at 1. Moreover, the overpayment decision contains instructions advising of claimant's opportunity to pursue a waiver, an advisement the Department would not provide for a fraud-type overpayment. EAB Exhibit 1 at 2. Accordingly, claimant's Regular UI overpayment is subject to recovery under ORS 657.310(1), and therefore may be waived if recovery of the benefits would be against equity and good conscience.

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(3) (effective June 23, 2021). Here, the record shows that recovery of claimant's overpaid regular UI benefits would not be against equity and good conscience as defined by OAR 471-030-0053(3). Claimant's total allowable household expenses did not exceed 90% of her total household income less unemployment benefits. The record shows that claimant's monthly total household income was \$4,005.00, 90% of which equals \$3,604.50. Claimant's monthly total household expenses amounted to \$3,498.49, which is less than \$3,604.50. Therefore, recovery of claimant's overpaid regular UI benefits is not against equity and good conscience, and claimant is not entitled to waiver of the regular UI overpayment.

FPUC Overpayment Waiver. 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.

Here, it is evident that the Department has deferred to state law in defining what it means for repayment to be contrary to equity and good conscience for purposes of claimant’s FPUC overpayment. The administrative decision in this case, decision # 150149, referenced claimant’s \$2,700 FPUC overpayment, listed citations to the CARES Act and amending legislation that authorized the FPUC program, and contained a finding of fact that claimant’s waiver request was denied because “claimant did not meet the 90% debt-income ratio set forth by the Employment Department.” EAB Exhibit 2 at 1. Decision # 150149 further contained in its “Reasoning” section the exact wording of the “against equity and good conscience” standard set forth by OAR 471-030-0053(3). EAB Exhibit 2 at 1. Thus, the Department opted to apply the state standard for defining what it means for repayment of claimant’s FPUC overpayment to be contrary to equity and good conscience, rather than the federal standard.

Applying the Department’s “against equity and good conscience” standard as set forth by OAR 471-030-0053(3), recovery of claimant’s overpaid FPUC benefits would not be contrary to equity and good conscience. As stated above, claimant’s total allowable household expenses did not exceed 90% of her total household income less unemployment benefits. The record shows that claimant’s monthly total household income was \$4,005.00, 90% of which equals \$3,604.50. Claimant’s monthly total household expenses amounted to \$3,498.49, which is less than \$3,604.50. Therefore, recovery of claimant’s overpaid FPUC benefits is not contrary to equity and good conscience and claimant is not entitled to waiver of the FPUC overpayment.

For these reasons, Order No. 23-UI-214650 is reversed. Claimant’s Regular UI and FPUC overpayment waiver requests are denied.

DECISION: Order No. 23-UI-214650 is set aside, as outlined above.

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

DATE of Service: April 7, 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.

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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