

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0302

Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On March 18, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to disclose a material fact and received \$2,736 in regular unemployment insurance (regular UI), \$2,280 in Pandemic Emergency Unemployment Compensation (PEUC), and \$6,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which she was not entitled and must repay (decision # 165314). On April 7, 2022, decision # 165314 became final without claimant having filed a request for hearing. On September 7, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 3, 2023 issued Order No. 23-UI-211443, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 17, 2023. On January 17, 2023, claimant filed a timely response to the appellant questionnaire. On February 23, 2023, ALJ Lucas conducted a hearing, and on February 28, 2023 issued Order No. 23-UI-217393, allowing claimant's late request for hearing and affirming decision # 165314. On March 13, 2023, claimant filed an application for review of Order No. 23-UI-217393 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portions of the order under review allowing claimant's late request for hearing and concluding that claimant did not receive remuneration during the weeks at issue are **adopted**. The remainder of this decision addresses claimant's liability for the overpayment of benefits.

FINDINGS OF FACT: (1) On April 14, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from June 7 through October 24, 2020 (weeks 24-20 through 43-20) and November 22, 2020 through February 20, 2021 (weeks 48-20 through 07-21). The Department paid claimant benefits for all of the weeks at issue. Over the course of the weeks at issue, the Department paid claimant a total of \$2,736 in regular UI, \$2,280 in PEUC, and \$6,600 in FPUC benefits.

(2) When claimant filed her initial claim, she was employed with Countryside Pizza, though the employer's business "came to a stop" due to the COVID-19 pandemic. Transcript at 49. On her initial claim, claimant indicated that she was "still working" for the employer, and that she had last worked there on March 10, 2020. Transcript at 31–32.

(3) On June 13, 2020, claimant quit working for the employer in order to accept work with another business. On June 15, 2020, claimant claimed benefits for the week of June 7, 2020 through June 13, 2020 (week 24-20).

(4) Sometime later, Countryside Pizza notified the Department that claimant had quit working for them. The Department subsequently investigated the reported separation, and on March 4, 2021 issued decision # 110723, concluding that claimant had quit work without good cause and was disqualified from receiving benefits effective June 7, 2020. On March 24, 2021, decision # 110723 became final without claimant having filed a request for hearing. On April 3, 2021, claimant filed a late request for hearing. The Office of Administrative Hearings (OAH) issued an order dismissing claimant's late request for hearing and leaving decision # 110723 undisturbed. That order subsequently became final without claimant having filed an application for review with EAB.¹

(5) The Department later determined that claimant earned enough wages to end the disqualification as of the week ending June 3, 2021 (week 26-21).

CONCLUSIONS AND REASONS: Claimant was paid benefits to which she was not entitled and is therefore liable for an overpayment of \$2,736 in regular UI, \$2,280 in PEUC, and \$6,600 in FPUC benefits. However, the overpayments were the result of an error not caused by claimant's false statement, misrepresentation of a material fact or failure to disclose a material fact, and claimant therefore is only required to make repayment via deduction from future benefits.

Overpayment of regular UI benefits. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

Because the Department paid claimant benefits for the weeks at issue, the Department had the burden to establish that benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid).

Claimant quit work on June 13, 2020, and the Department later concluded in decision # 110723 that the work separation disqualified claimant from receiving benefits effective June 7, 2020. Decision # 110723 became final without claimant having filed a timely request for hearing, and claimant's late request for hearing on the decision ultimately was dismissed, leaving decision # 110273 undisturbed. Thus, as a matter of law, claimant was disqualified from receiving benefits effective June 7, 2020. The record shows that claimant earned enough wages to end the disqualification effective June 3, 2021.² As such, claimant was not eligible for regular UI benefits for any of the weeks at issue, and the entire sum of \$2,736 in regular UI benefits paid for the weeks at issue were overpaid.

The order under review found that claimant "did not inform the Department that [she] had quit," and concluded that the overpayment of benefits was the result of claimant's failure to disclose a material fact, and that claimant was required to repay the overpaid regular UI benefits under ORS 657.310. Order No. 23-UI-217393 at 5, 15. The record does not support these conclusions or the finding upon which they were based.

At hearing, claimant testified that she reported on her weekly claim that she had quit a job. Transcript at 37. The Department's witness testified that there was "nothing on [the claim for week 24-20], or prior weeks, or even weeks... after that" to suggest that claimant had a separation from work. Transcript at 43-44. However, the Department did not offer into evidence the weekly claim in question, or otherwise offer additional evidence to corroborate their assertion. Absent such evidence, the record as to whether claimant reported the work separation when claiming benefits for week 24-20 is, at best, equally balanced. The Department therefore failed to show that claimant did not report the work separation when claiming benefits for week 24-20.

The record therefore fails to establish that claimant was overpaid paid benefits because she made a false statement, misrepresentation of a material fact or failure to disclose a material fact. The record instead establishes only that she was overpaid benefits because an initial decision to pay her benefits was subsequently reversed by a decision finding that she was not entitled to those benefits. As such, claimant's overpayment of regular UI benefits is governed by ORS 657.315 rather than ORS 657.310, and claimant is only required to repay the overpaid regular UI benefits via deduction from any future benefits otherwise payable to her under ORS Chapter 657 for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

Overpayment of PEUC benefits. Under the provisions of the CARES Act, 15 U.S.C. § 9025, claimant also received \$2,280 in PEUC benefits to which she was not entitled because she was not eligible for benefits under state law. *See* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 17-20 (April 10, 2020) at I-8 ("An individual is not entitled to receive PEUC for a week if the individual is ineligible for benefits for the week due to a disqualification under the applicable state law."). Pursuant to

² *See* ORS 657.176(2).

15 U.S.C. § 9025(e)(2), an individual who receives PEUC payments to which the individual was not entitled is liable to repay those benefits, unless the Department waives such repayment because it determines that the payment of those benefits was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. The record is not clear as to what part of the overpayment, if any, the Department has waived.

Claimant therefore is liable for the overpayment of \$2,280 in PEUC benefits she received during the weeks at issue. Under 15 U.S.C. § 9025(e)(3), the Department may recover the PEUC benefits by deduction from any future PEUC payments payable to her or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department during the three-year period following the date she received the PEUC benefits to which she was not entitled.

United States Department of Labor guidance documents elaborate that while a PEUC overpayment may be offset by other State and Federal unemployment benefits payable during this three-year period, State agencies “must recover the amount of PEUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [UI] paid by the State.” U.S. Dep’t of Labor, UIPL 17-20, at I-11. “After three years, a State may continue to recover PEUC overpayments through means other than benefit offsets, according to State law.” UIPL 17-20 at I-11; see also U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 17-20, Change 1 (May 13, 2020) at I-8 (“[15 U.S.C. § 9025(e)(3)] requires benefit offset as one method of recovery, but states can also use other means to recover PEUC overpayments as allowable under state or Federal law[.]”). Accordingly, because the provision of state law governing claimant’s regular UI overpayment is ORS 657.315(1), claimant is liable to repay the amount of her PEUC overpayment via deduction from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date that decision # 165314 becomes final.

Overpayment of FPUC benefits. Under the provisions of the CARES Act, 15 U.S.C. § 9023, claimant also received \$6,600 in FPUC benefits to which she was not entitled because she was not eligible for benefits under state law. *See* U.S. Dep’t of Labor, UIPL No. 15-20 (April 4, 2020) at I-7 (“If an individual is deemed ineligible for regular compensation in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created.”). Pursuant to 15 U.S.C. § 9023(f)(2), an individual who receives FPUC payments to which the individual was not entitled is liable to repay those benefits, unless the Department waives such repayment because it determines that the payment of those benefits was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. The record is not clear as to what part of the overpayment, if any, the Department has waived.

Claimant therefore is liable for the overpayment of \$6,600 in FPUC benefits she received during the weeks at issue. Under 15 U.S.C. § 9023(f)(3)(A), the Department may recover the FPUC benefits by deduction from any future FPUC payments payable to claimant or from any future unemployment compensation payable to claimant under any state or federal unemployment compensation law administered by the Department during the three-year period following the date she received the FPUC benefits to which she was not entitled.

United States Department of Labor guidance documents elaborate that while an FPUC overpayment may be offset by other State and Federal unemployment benefits payable during this three-year period, State agencies “must recover the amount of FPUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [UI] paid by the State.” UIPL 15-20 at I-7. “After three years, a State may continue to recover FPUC overpayments through means other than benefit offsets, according to State law.” UIPL 15-20 at I-7. Accordingly, because the provision of state law governing claimant’s regular UI overpayment is ORS 657.315(1), claimant is liable to repay the amount of her FPUC overpayment via deduction from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date that decision # 165314 becomes final.

In sum, the order under review is modified. Claimant is liable for an overpayment of \$2,736 in regular UI benefits and is liable to repay the benefits via deduction from future benefits payable during the five-year period following the date that decision # 165314 becomes final. Claimant is liable for overpayments of \$2,280 in PEUC and \$6,600 in FPUC benefits to be recovered in accordance with the same procedures as apply to recovery of claimant’s regular UI overpayment.

DECISION: Order No. 23-UI-217393 is modified, as outlined above.

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

DATE of Service: April 20, 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 Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov. You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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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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www.Oregon.gov/Employ/eab

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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.