

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0302-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0302 Adhered to on Reconsideration

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).

On April 20, 2023, EAB issued EAB Decision 2023-EAB-0302 modifying Order No. 23-UI-217393 by concluding that claimant was overpaid \$2,736 in regular UI, \$2,280 in PEUC, and \$6,600 in FPUC benefits that she must repay, but did not make a false statement, misrepresent a material fact, or fail to disclose a material fact, and therefore was only required to repay via deduction from future benefits. On May 10, 2023, the Department filed a request for reconsideration of EAB Decision 2023-EAB-0302. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: The Department's request for reconsideration is allowed. EAB Decision 2023-EAB-0302 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment

Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

The Department filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed.

In their request, the Department objected to “EAB’s findings that the overpayment was [the] ‘result of an error not caused by claimant’s false statement,’ and ‘that the Department did not offer into evidence the weekly claim in question, or otherwise offer additional evidence.’” Department’s Request for Reconsideration at 1. The Department further asserted that they “did offer evidence [at hearing] to corroborate [their] assertions of claimant misrepresentation,” because, at hearing, the Department’s witness “referred directly to information stored in Mainframe, OED’s system of record,” including “citation of the claimant’s responses entered for the weekly claim of 24/20[.]” Department’s Request for Reconsideration at 1.

EAB acknowledged this information in the decision under reconsideration, contrasting the Department’s testimony 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,” with claimant’s testimony asserting that she *had* reported the work separation when she filed the relevant weekly claim. EAB Decision 2023-EAB-0302 at 3. As EAB explained in the decision under reconsideration, the outcome in that decision is not the result of the Department having offered no evidence that claimant did not report the work separation, but that they did not offer *corroborating* evidence—e.g., a copy of the weekly claim form that would show claimant’s responses for that week. EAB Decision 2023-EAB-0302 at 3. In the absence of such additional evidence, EAB explained, the evidence as to whether claimant had reported the work separation was equally balanced, and the Department therefore failed to meet their burden of proof to show that claimant made a misrepresentation of material fact. EAB Decision 2023-EAB-0302 at 3.

With their request for reconsideration, the Department has now offered a copy of what is purported to be claimant’s responses on her weekly claim for week 24-20. *See* Department’s Request for Reconsideration at 4. The Department asserted that had the ALJ or claimant requested for the Department to produce this evidence, the Department would have done so. Department’s Request for Reconsideration at 1. Because this evidence is not in the record, whether it may be considered is governed by OAR 471-041-0090(1) (May 13, 2019). In relevant part, that rule requires that for EAB to consider additional evidence not received into the hearing record, the party offering the evidence must show that “[f]actors or circumstances beyond the party’s reasonable control prevented the party from offering the additional evidence into the hearing record.” OAR 471-041-0090(1)(b)(B). The Department has not made such a showing. The fact that neither claimant nor the ALJ requested this evidence does not show that the Department was unable to offer it due to factors or circumstances beyond their control. Therefore, under OAR 471-041-0090, EAB has considered only information received into evidence at hearing when reaching this decision.

Because EAB cannot consider the additional evidence that the Department has offered with their request for reconsideration, the evidence as to whether claimant reported the work separation remains equally

balanced. Therefore, the Department still has not met their burden to show by a preponderance of the evidence that the overpayment at issue was the result of claimant's misrepresentation of material fact.

DECISION: The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0302 is adhered to, as clarified herein.

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

DATE of Service: June 15, 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 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.

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.