

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0345

Reversed
Late Request for Hearing Allowed
Overpayment Not Assessed

PROCEDURAL HISTORY: On August 7, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$12,600 in Emergency Unemployment Compensation (EUC) benefits that claimant was required to repay to the Department. On August 27, 2012, the August 7, 2012 administrative decision became final without claimant having filed a request for hearing. On March 4, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 7, 2022 issued Order No. 22-UI-195584, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 21, 2022. On June 21, 2022, claimant filed a timely response to the appellant questionnaire. On August 5, 2022, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 22-UI-195584 was cancelled and that a hearing would be scheduled to determine whether claimant had good cause to file her request for hearing late and, if so, the merits of the August 7, 2012 administrative decision.

On March 7, 2023, ALJ Wardlow conducted a hearing, and on March 15, 2023 issued Order No. 23-UI-219045, concluding that claimant had good cause to file her late request for hearing and affirming the August 7, 2012 administrative decision. On March 23, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to file her late request for hearing is **adopted**. The remainder of this decision addresses the assessment of overpayment.

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

FINDING OF FACT: (1) On August 7, 2012, the Department issued an administrative decision concluding that claimant received EUC benefits of \$360 per week for the weeks including August 14, 2011 through April 14, 2012 (weeks 33-11 through 15-12) totaling \$12,600. Exhibit 2 at 1. It further concluded that claimant was not entitled to receive those benefits because an administrative decision issued April 18, 2012 had disqualified her from receiving benefits based on a work separation, and that claimant's request for hearing on that decision was dismissed for failure to appear at a July 23, 2012 hearing on the matter. Exhibit 2 at 1.

CONCLUSIONS AND REASONS: Claimant was not overpaid \$12,600 in EUC benefits.

Pub. L. 110-252 §4005(b) mandates that states require repayment from individuals who have received amounts of EUC to which they were not entitled. 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. ORS 657.310(1) 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. Where, as here, the Department alleges it has paid benefits and seeks to recoup them, the Department has the burden to prove benefits were received by the individual and should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The order under review concluded that the Department proved by a preponderance of evidence that claimant received \$12,600 in EUC benefits for the weeks at issue and that she was not entitled to receive those benefits. Order No. 23-UI-219045. The record does not support these conclusions.

The Department did not establish that claimant received the benefits at issue. Claimant testified that she did not recall "getting benefits" from the Department for the weeks of August 14, 2011 through April 14, 2012. Transcript at 28. Other than testifying that the EUC benefits for those weeks were paid by check, the Department representative's testimony regarding the claimant's receipt of EUC benefits was limited to repeating the assertions made in the August 7, 2012 administrative decision. Transcript at 17. Logically, the August 7, 2012 administrative decision cannot be relied upon as evidence that its own conclusions are true. The record at hearing was held open for the Department to submit a schedule detailing the payments allegedly made to claimant during the period at issue, which the Department representative testified were records that the Department ordinarily keeps in the course of business, but which he was unable to locate at the time of hearing. Transcript at 32-33. The Department never submitted such evidence. Accordingly, the Department has failed to meet its burden of proving that, more likely than not, claimant received \$12,600 in EUC benefits for the weeks of August 14, 2011 through April 14, 2012.

Further, the Department did not establish that claimant was ineligible to receive benefits during the weeks at issue. In his testimony, the Department representative repeated the August 7, 2012 administrative decision's assertions that claimant was ineligible to receive benefits for the period at issue because of a disqualifying work separation that was the subject of an April 18, 2012 administrative decision. Transcript at 17-18. However, when asked for the effective dates of the disqualification, the

Department representative could only state that, “[I]t’s usually the week that the separation occurred, but I don’t have that decision in front of me, so I don’t know what it is now.” Transcript at 18-19. The record contains no other evidence regarding the date of separation or alleged effective dates of the resulting disqualification from benefits. Accordingly, the Department has failed to prove that, more likely than not, claimant was disqualified from receiving benefits for the weeks of August 14, 2011 through April 14, 2012, and was therefore ineligible to receive any benefits for those weeks.

For these reasons, the Department has failed to establish by a preponderance of evidence that claimant received benefits to which she was not entitled for the weeks of August 14, 2011 through April 14, 2012, and an overpayment of \$12,600 in EUC for that period is not assessed.

DECISION: Order No. 23-UI-219045 is set aside, as outlined above.

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

DATE of Service: May 2, 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

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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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