

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0461

Reversed & Remanded

PROCEDURAL HISTORY: On February 23, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's requests for waiver of overpayments of Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Lost Wages Assistance (LWA) benefits that the Department had previously assessed on January 21, 2022 (decision # 162820). Claimant filed a timely request for hearing. On April 7, 2023, ALJ Lucas conducted a hearing, and on April 14, 2023 issued Order No. 23-UI-222206, affirming decision # 162820. On April 17, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's April 19 and 24, 2023 written arguments when 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 consists of Order No. 23-UI-221821, issued on April 12, 2023, regarding claimant's eligibility for PUA benefits. EAB has taken notice of this evidence, which is contained in Employment Department Records. OAR 471-041-0090(1)(c). This evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

FINDINGS OF FACT: (1) Claimant claimed PUA benefits for the weeks from February 2, 2020 through September 4, 2021 (weeks 06-20 through 35-21). These are the weeks at issue. The Department paid claimant PUA benefits of \$271 per week, for a total of \$21,951 in PUA benefits, for the weeks at issue. The Department also paid claimant a total of \$21,000 in FPUC benefits for some of the weeks at issue, and a total of \$1,800 in LWA benefits for some of the weeks at issue.

(2) On December 22, 2021, the Department served an amended Notice of Determination for Pandemic Unemployment Assistance (PUA), concluding that claimant was not eligible for PUA benefits for the weeks at issue because he had been unemployed due to reasons unrelated to the COVID-19 pandemic.

(3) On January 21, 2022, the Department served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$21,951 in PUA benefits, \$21,000 in FPUC benefits, and \$1,800 in LWA benefits that claimant was required to repay, plus a \$12,885.30 monetary penalty. The Department based its determination of overpayment on two factors. For the weeks from February 2, 2020 through April 25, 2020 (weeks 06-20 through 17-20), the Department determined that claimant had failed to report earnings in excess of his weekly benefit amount and therefore was not eligible for benefits for those weeks. For the weeks from April 26, 2020 through September 4, 2021 (weeks through 18-20 through 35-21), the Department determined that claimant had not been eligible for PUA benefits for the reasons set forth in the December 22, 2021 PUA determination.

(4) Claimant filed requests for hearing on the December 22, 2021 PUA determination and the January 21, 2022 overpayment decision.

(5) On February 2, 2022, claimant filed with the Department requests for waiver of the remaining overpayment balances assessed by the January 21, 2022 overpayment decision.

(6) On April 7, 2023, ALJ Lucas conducted a hearing on the December 22, 2021 PUA determination, and on April 12, 2023 issued Order No. 23-UI-221821, reversing the PUA determination by concluding that claimant was eligible for PUA benefits for weeks 06-20 through 35-21. *See* EAB Exhibit 1.

(7) As of the date of this decision, a continuation hearing has not yet been held, or an order issued, regarding the January 21, 2022 overpayment decision.¹

CONCLUSIONS AND REASONS: Order No. 23-UI-222206 is set aside and this matter remanded for further development of the record.

Waiver of overpayments for PUA, FPUC, and LWA benefits that claimant was found to have been overpaid are governed by separate statutes, 15 U.S.C. § 9021(d)(4), 15 U.S.C. § 9024(f) (incorporating the requirements of 15 U.S.C. § 9025(e)), and § 262(b) of the Continued Assistance for Unemployed Workers Act of 2020, respectively. However, each of those statutes set forth the same requirements for a waiver to be granted: (1) the overpayment of benefits must be without fault on the part of the claimant, and (2) repayment must be contrary to equity and good conscience. 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

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). 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.

unconscionable under the circumstances. Unemployment Insurance Program Letter 20-21, Change 1 (February 7, 2022) at 10-13.

The order under review denied claimant's requests for waiver of the PUA, FPUC, and LWA overpayments because the January 21, 2022 overpayment decision "concluded that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits," and that claimant was therefore at fault for creating the overpayments. Order No. 23-UI-222206 at 9. However, the record as developed does not support this conclusion.

As found above, a continuation hearing on the January 21, 2022 overpayment decision has not yet been held, nor has a final order been entered on that decision. Furthermore, the determination that claimant was not eligible for PUA benefits for any of the weeks at issue was reversed at hearing. As such, the question of how much of an overpayment, if any, claimant is still liable for has not yet been answered. Likewise, because the overpayment decision has yet to be fully adjudicated, the question of whether claimant was at fault for any remaining overpayments is not yet settled. Those matters must be settled before a proper determination of claimant's eligibility for waiver of any remaining overpayments can be made. OAH should consider consolidating the continuation hearing on the January 21, 2022 overpayment decision with the remand hearing on this matter.

Further, the record as developed is insufficient to determine whether repayment of any remaining overpayments would be contrary to equity and good conscience. At hearing, claimant testified that he was, at the time of hearing, unhoused and living in his vehicle, suggesting that he therefore had no housing expenses to account for in the calculation of whether repayment would be considered a financial hardship. Transcript at 17. As a result, the order under review did not include housing costs in its calculation of claimant's monthly expenses. Order No. 23-UI-222206 at 2. However, claimant also testified that he had previously been paying \$600 per month to rent space at an RV park, which he "had to give up." Transcript at 17. It is not clear from this testimony whether claimant has reason to believe that he will soon be housed again, such that he might need to include housing costs in his monthly expenses for the financial hardship calculation. On remand, the ALJ should develop the record to clarify this point.

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). Because further development of the record is necessary for a determination of whether claimant's requests for waiver of overpayment should be granted, Order No. 23-UI-222206 is reversed, and this matter is remanded.

DECISION: Order No. 23-UI-222206 is 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: May 22, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-222206 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 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.

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