

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0508

Affirmed
Overpayment Waiver Denied

PROCEDURAL HISTORY: On March 24, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's requests for waiver of an overpayment of Pandemic Unemployment Emergency Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC) benefits that the Department had previously assessed (decision # 134402).¹ Claimant filed a timely request for hearing. On April 11, 2023, ALJ Lucas conducted a hearing, and on April 17, 2023 issued Order No. 23-UI-222233, affirming decision # 134402. On May 2, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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 two administrative decisions, # 104836 and 83432, which, respectively, created and assessed the overpayment at issue in this matter. These documents have 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.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision, aside from EAB Exhibit 1 and information contained in Department records that EAB has taken notice of as indicated below. EAB considered claimant's argument to the extent it was based on the record.

¹ Although decision # 134402 indicated only that claimant had been assessed an overpayment of PEUC benefits, the record shows that the overpayment at issue consisted of both PEUC and FPUC benefits. *See* EAB Exhibit 1 at 5.

FINDINGS OF FACT: (1) On June 16, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks including May 2, 2021 through June 12, 2021 (weeks 18-21 through 23-21). These are the weeks at issue. The Department paid claimant a total of \$2,310.00 in PEUC benefits and \$1,800.00 in FPUC benefits for the weeks at issue.

(2) On June 24, 2021, the Department served notice of an administrative decision concluding that claimant had voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective March 7, 2021 (decision # 104836). On July 14, 2021, decision # 104836 became final without claimant having filed a request for hearing.

(3) On March 14, 2022, the Department served notice of an administrative decision, based in part on decision # 104836, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of \$2,310.00 in PEUC benefits and \$1,800.00 in FPUC benefits that claimant was required to repay to the Department (decision # 84342). Decision # 84342 found that the overpayment of benefits was the result of claimant having failed to disclose that she voluntarily quit work, as addressed in decision # 104836, when she filed “her claim and/or claimed weekly benefits[.]” EAB Exhibit 1 at 5. On April 4, 2022, decision # 84342 became final without claimant having filed a request for hearing.

(4) On April 7, 2022, claimant filed late requests for hearing on decisions # 104836 and 84342. On December 28, 2022, following hearings regarding claimant’s late requests for hearing, ALJ Monroe issued Orders No. 22-UI-211150 and 22-UI-211151, dismissing claimant’s requests on # 104836 and 84342, respectively, as late without good cause, leaving the underlying administrative decisions undisturbed. Claimant filed timely applications for review of Orders No. 22-UI-211150 and 22-UI-211151 with EAB. On February 16, 2023, EAB issued EAB Decisions 2023-EAB-0078 and 2023-EAB-0077, affirming Orders No. 22-UI-211150 and 22-UI-211151, respectively. EAB Decisions 2023-EAB-0078 and 2023-EAB-0077 have since become final without claimant having filed petitions for judicial review with the Oregon Court of Appeals.²

(5) As of April 11, 2023, claimant had a total remaining overpayment balance of \$2,664.13.

CONCLUSIONS AND REASONS: Claimant is not entitled to waiver of her overpayment of PEUC benefits.

Waivers of PEUC overpayments are governed by 15 U.S.C. § 9025(e) which requires, for waiver to be granted, that the overpayment of PEUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. Similarly, waivers of FPUC overpayments are governed by 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. With regard to overpayments of federal pandemic-related benefits, including PEUC and FPUC benefits, 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

² EAB has taken notice of these facts, which are 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.

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[.]” UIP 20-21 Change 1, at 10.

The record shows that the overpayment of PEUC and FPUC benefits resulted from the Department’s determination that claimant voluntarily quit work without good cause, resulting in a disqualification from benefits that included the weeks at issue. The record further shows that claimant had failed to disclose that she voluntarily left work, causing the Department to pay claimant benefits that they later determined she was not eligible to receive. Thus, based on the conclusions in the overpayment decision, the overpayment of benefits was caused by claimant’s failure to report the voluntary quit. Under such circumstances, claimant would not be “considered to be without fault” for the overpayment under the above federal guidance because she did not provide all information correctly as requested by the state.

Claimant asserted otherwise, stating that she “did not cause the overpayment” because she ‘did not misrepresent/lie/withhold information to cause the overpayment,’ and that the report that she had voluntarily quit came from her former boss who “lied about asking [claimant] to return to work[.]” Claimant’s Written Argument at 1. However, the record further shows that claimant failed to file timely requests for hearing on the voluntary quit and overpayment administrative decisions, and that her late requests for hearing on those decisions were ultimately dismissed on appeal. The result is that the conclusions reached in the voluntary quit and overpayment decisions remain in effect. 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 assertions to the contrary.

Because claimant caused the overpayments at issue in this matter, claimant is not eligible for waiver of the remaining balance of her PEUC and FPUC overpayments.

DECISION: Order No. 23-UI-222233 is affirmed.

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

DATE of Service: June 8, 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.

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