

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0513

Modified
Overpayment Not Assessed
No Penalties

PROCEDURAL HISTORY: On October 18, 2022, the Oregon Employment Department (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 \$2,652.00 in regular unemployment insurance (regular UI) benefits, \$2,431.00 in extended benefits (EB), \$8,840.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$13,800.00 in Federal Pandemic Unemployment Compensation (FPUC) that claimant was required to repay to the Department, a \$4,158.45 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On April 6, 2023, ALJ Sachet-Rung conducted a hearing, and on April 14, 2023 issued Order No. 23-UI-222098, modifying the October 18, 2022 administrative decision by concluding that claimant was liable for an overpayment of \$2,652.00 in regular UI benefits, \$2,431.00 in EB, \$8,840.00 in PEUC benefits, and \$13,800.00 in FPUC benefits that claimant was required to repay the Department, but that claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and therefore was not liable for a monetary penalty or penalty disqualification. On May 4, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Prior to March 19, 2020, Mount Hood Cultural Center and Museum employed claimant as a visitor information specialist. In March 2020, claimant was furloughed due to COVID-19-related restrictions on the employer's operations.

(2) On March 19, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant established a valid claim for regular UI benefits with a weekly benefit amount of \$221.

(3) On June 12, 2020, the employer notified claimant that she was being recalled from furlough and that she was expected to return to work on June 24, 2020. Claimant requested to consult her doctor before agreeing to return to work.

(4) On June 15, 2020, claimant's doctor advised claimant, in writing, not to return to in-person work through July 19, 2020.

(5) On June 16, 2020, claimant notified the employer that she would not return to work on June 24, 2020, but would remain in touch for future work opportunities. Claimant also expressed a willingness to perform remote work, which the employer declined.

(6) On June 22, 2020, the employer emailed claimant a letter reiterating their offer of work beginning June 24, 2020. Later on June 22, 2020, claimant responded via letter stating that she was unable to return to work until "sometime after July 19th." Exhibit 2 at 8.

(7) Claimant filed a weekly claim for benefits for the week of June 21, 2020 through June 27, 2020 (week 26-20). In making that weekly claim, claimant was asked, "Did you fail to accept an offer of work last week?" Claimant answered "No." Claimant believed this answer to be correct because she felt she had good cause for failing to accept the offer of work.

(8) Claimant filed weekly claims for benefits for the weeks including June 21, 2020 through September 4, 2021 (weeks 26-20 through 35-21). These are the weeks at issue. Claimant received \$2,652.00 in regular UI benefits, \$2,431.00 in EB, \$8,840.00 in PEUC benefits, and \$13,800.00 in FPUC benefits for those weeks, totaling \$27,723.00.

(9) On October 18, 2022, the Department served notice of an administrative decision concluding that on June 24, 2020, claimant had refused an offer of work from the employer and was therefore disqualified from receiving unemployment insurance benefits effective June 21, 2020 (decision # 84043).¹ Claimant filed a timely request for hearing on decision # 84043.

(10) On April 14, 2023, ALJ Sachet-Rung issued Order No. 23-UI-222102, reversing decision # 84043 by concluding that claimant had good cause for failing to accept the employer's offer of work, and was therefore not disqualified from receiving benefits based on her failure to accept an offer of work. Order No. 23-UI-222102 became final on May 4, 2023, without any party having filed an application for review of the order with EAB.

¹ EAB has taken notice of decision # 84043 and Order No. 23-UI-222102, 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 information will remain in the record.

CONCLUSIONS AND REASONS: Claimant was not overpaid benefits. Claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits and is not subject to a monetary penalty or penalty disqualification.

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. In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. In a case alleging that an individual should be disqualified from future benefits, the Department has the burden of proof to establish that the individual willfully violated ORS 657.215. *Cook v. Employment Division*, 47 Or. App. 437 (1980). The Department must show that the individual acted with the intent to misrepresent a fact or facts for the purpose of obtaining unemployment benefits. *Pruett v. Employment Division*, 86 Or. App. 516 (1987).

The order under review concluded that claimant was overpaid \$27,723.00 in benefits that were "received in error" for the weeks at issue. Order No. 23-UI-222098 at 8. The record does not support this conclusion.

Claimant was entitled to the benefits she received for the weeks at issue. The Department initially disqualified claimant from receiving benefits for the weeks at issue because she had failed to accept an offer of work during week 26-20. That decision was later reversed on appeal, and Order No. 23-UI-222102, which is now final, concluded that claimant was not disqualified from receiving benefits for the weeks at issue based on a failure to accept an offer of work. Therefore, the Department has not shown by a preponderance of evidence that claimant was not entitled to any of the benefits she received for the weeks at issue. Accordingly, no overpayment is assessed for the weeks at issue.

Claimant made a false statement in her weekly claim for benefits for week 26-20. The record shows that the employer notified claimant on June 12, 2020 that they expected her to return to work on June 24, 2020. They reiterated that offer of work, in writing, on June 22, 2020. Claimant's June 22, 2020 written response to the employer, stating that she was unable to work until at least July 19, 2020, demonstrated that claimant received the offer, understood it, and failed to accept it. Exhibit 2 at 8. When claiming benefits for that week, claimant was asked on the claim form, "Did you fail to accept an offer of work last week?" Exhibit 3 at 5. Claimant answered "No." Transcript at 27. This answer was demonstrably false, as claimant knew she had been offered work by the employer to begin June 24, 2020, and claimant did not accept that offer.

Claimant testified that she believed she had not failed to accept an offer of work because of her doctor's recommendation that she not work at that time, and because of her willingness to return to work for the employer at some future time when she was able. Transcript at 27. This testimony shows that claimant, more likely than not, did not understand, either at the time she made her claim for benefits for week 26-

20 or during her testimony at hearing, that the question posed on the claim form asked *only whether she failed to accept an offer of work*, regardless of whether she believed she had good cause for failing to accept such an offer. The record therefore shows that when claimant falsely answered “No” to that question, she did so because she misunderstood the question, rather than because she intended to misrepresent a fact for the purpose of obtaining benefits to which she was not entitled. Accordingly, claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits and is not subject to a penalty disqualification or a monetary penalty.

For these reasons, an overpayment is not assessed, and claimant is not subject to a monetary penalty or penalty disqualification.

DECISION: Order No. 23-UI-222098 is modified, as outlined above.

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.

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 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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