

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0530

Modified
Overpayment Not Assessed, Penalty Weeks Assessed

PROCEDURAL HISTORY: On March 30, 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 \$3,945 in regular unemployment insurance (regular UI) benefits, \$526 in Extended Benefits (EB), \$5,523 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, \$7,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department, a \$2,579.10 monetary penalty, and a 52-week penalty disqualification from future benefits. On April 19, 2022, the March 30, 2022 administrative decision became final without claimant having filed a request for hearing. On May 3, 2022, claimant filed a late request for hearing on the March 30, 2022 administrative decision. ALJ Kangas considered claimant's request, and on August 9, 2022 issued Order No. 22-UI-200159, dismissing claimant's request for hearing on the March 30, 2022 administrative decision as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 23, 2022. On August 29, 2022, Order No. 22-UI-200159 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On September 21, 2022, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 22-UI-200159 with EAB. On January 14, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding the matter because the questionnaire response was late.

On February 1, 2023, EAB issued EAB Decision 2023-EAB-0116,¹ dismissing claimant's late application for review of Order No. 22-UI-200159 without prejudice. On February 9, 2023, claimant

¹ EAB Decision 2023-EAB-0116 was issued in triplicate with EAB Decisions 2023-EAB-0114 and 2023-EAB-0115, two cases with which it had been consolidated.

filed a request for reconsideration of EAB Decision 2023-EAB-0116. On March 17, 2023 EAB issued EAB Decision 2023-EAB-0116-R,² allowing claimant's request for reconsideration, allowing claimant's late application for review of Order No. 22-UI-200159, allowing claimant's late request for hearing on the March 30, 2022 administrative decision, and remanding the matter for a hearing on the merits of the March 30, 2022 administrative decision.

On April 10, 2023, ALJ Goodrich conducted a hearing at which the employer Pint Pot Public House failed to appear, and on April 21, 2023 issued Order No. 23-UI-222934 affirming the March 30, 2022 administrative decision. On May 7, 2023, claimant filed an application for review with EAB.

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). Other than information EAB took notice of as indicated below, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On March 21, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits. The Department determined that claimant had a valid claim for benefits with a weekly benefit amount of \$263.

(2) After filing his initial claim, claimant claimed benefits while his employer, Pint Pot Public House, was closed due to COVID-19 restrictions. On two occasions during this period, in April 2020 and May 2020, the Department required claimant to take a basic knowledge review test to complete the claiming process via the Department's online claiming system. Each test quizzed claimant on the following eligibility question that appears on the weekly claim form, "Did you quit a job last week?" Transcript at 16. On both tests, claimant scored a correct answer when quizzed about that eligibility question.

(3) On June 6, 2020, claimant voluntarily quit working for the employer Pint Pot Public House. He did so with good cause in order to move in with his parents, who lived in another town, where he could live rent free, which was necessary because he could not afford his rent due to only receiving about four hours of work from the employer per week.³ The next week, claimant claimed benefits for the week of May 31, 2020 through June 6, 2020 (week 23-20). The claim form asked claimant, "Did you quit a job last week?" Claimant falsely answered "no" to this question.

(4) Thereafter, claimant claimed benefits for the weeks including June 7, 2020 through December 26, 2020 (weeks 24-20 through 52-20). Claimant then stopped making weekly claims for benefits.

² EAB Decision 2023-EAB-0116-R was issued in triplicate with EAB Decisions 2023-EAB-0114-R and 2023-EAB-0115-R, two cases with which it had been consolidated.

³ EAB has taken notice of these facts, which are contained in EAB Decision 2023-EAB-0532 issued on June 12, 2023. 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.

(5) In February 2021, claimant began working for the employer 89 Steak House, and then, on June 26, 2021, voluntarily quit working there with good cause in order to relocate to his sister's property and thereby avoid the extreme heat he experienced living in his van on public land near the town in which 89 Steak House was located.⁴

(6) During the week of July 4, 2021 through July 10, 2021 (week 27-21), claimant restarted his initial claim for benefits. The Department's restart form asked claimant to report the nature of his work separation from the employer 89 Steak House. Claimant falsely reported that he had been laid off for lack of work.

(7) Thereafter, claimant claimed benefits for week 27-21, the weeks including July 11, 2021 through August 21, 2021 (weeks 28-21 through 33-21), and the week of August 29, 2021 through September 4, 2021 (week 35-21). All told, claimant claimed benefits for weeks 23-20 through 52-20, weeks 27-21 through 33-21, and week 35-21. These are the weeks at issue.

(8) The Department paid claimant \$263 of regular UI benefits for each of weeks 23-20 through 37-20 for a total of \$3,945. The Department paid claimant \$263 of Extended Benefits (EB) for each of weeks 51-20 through 52-20 for a total of \$526. The Department paid claimant \$263 of Pandemic Emergency Unemployment Compensation (PEUC) benefits for each of weeks 38-20 through 50-20, weeks 27-21 through 33-21, and week 35-21 for a total of \$5,523. The Department paid claimant \$600 of Federal Pandemic Unemployment Compensation (FPUC) benefits for each of weeks 23-20 through 30-20, and \$300 of FPUC benefits for each of weeks 27-21 through 33-21 and week 35-21, for a total of \$7,200. The Department paid claimant \$300 of Lost Wages Assistance (LWA) benefits for each of weeks 31-20 through 36-20 for a total of \$1,800.

(9) The Department later adjudicated claimant's work separations from Pint Pot Public House and 89 Steak House and issued administrative decisions respectively concluding that claimant voluntarily quit work without good cause with respect to each employer. The Department concluded that claimant had willfully misrepresented those work separations to obtain benefits, concluded that all of the above-mentioned benefits paid to claimant had been overpaid, and assessed a \$2,579.10 monetary penalty and a 52-week penalty disqualification from future benefits.

CONCLUSIONS AND REASONS: Order No. 23-UI-222934 is modified. Claimant was not overpaid benefits. Claimant is not liable for a monetary penalty. Claimant is liable for a 4-week penalty disqualification from future benefits.

Overpayment. ORS 657.310(1)(a) 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. Unemployed individuals who are disqualified from receiving unemployment insurance benefits are not

⁴ EAB has taken notice of these facts, which are contained in EAB Decision 2023-EAB-0531 issued on June 14, 2023. 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.

eligible to receive benefits. ORS 657.155(1)(e) (“An unemployed individual shall be eligible to receive benefits with respect to any week only if . . . the individual is not disqualified from benefits[.]”). Under ORS 657.176(2)(c), if the Department finds that an individual voluntarily left work without good cause, the individual shall be disqualified from the receipt of benefits until the claimant earns four times their weekly benefit amount for work performed in subject employment starting with the week after the week of the voluntary leaving.

Here, by operation of EAB Decisions 2023-EAB-0532 and 2023-EAB-0531, claimant’s June 6, 2020 voluntary leaving from the employer Pint Pot Public House and his June 26, 2021 voluntary leaving from the employer 89 Steak House were each with good cause and, therefore, did not disqualify claimant from receiving benefits. As a result, claimant was entitled to the \$3,945 of regular UI benefits and the \$526 of EB benefits he received and was not overpaid those amounts. Likewise, claimant was entitled to the \$7,200 of FPUC benefits he received was not overpaid that amount. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) at I-5 (Individuals were eligible to receive the full FPUC benefit if they were eligible to receive at least one dollar of regular UI benefits for the claimed week). Claimant was also entitled to the \$5,523 of PEUC benefits he received and the \$1,800 of LWA benefits he received and was not overpaid those amounts.

Thus, claimant was not overpaid the benefits he received. The order under review concluded that claimant was overpaid \$3,945 regular UI benefits, \$526 in EB benefits, \$5,523 in PEUC benefits, \$7,200 in FPUC benefits, and \$1,800 in LWA benefits. Order No. 23-UI-222934 at 4-9. The record does not support these conclusions and the order under review is modified accordingly.

Monetary Penalty. Under ORS 657.310(2)(a), 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 regular UI and EB overpayment. Per federal guidance, the minimum 15 percent monetary penalty is applicable to the amount of an individual’s PEUC and FPUC overpayments as well. U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 20-21 (May 5, 2021) at 4-5.

Because claimant was not disqualified from receiving the benefits he received for the weeks at issue, no overpayment resulted. Because the monetary penalty is calculated as a percentage of the overpayment assessed, and given that there is no overpayment in this case, claimant is not liable for a monetary penalty. The order under review concluded that claimant was liable for a \$2,579.10 monetary penalty. Order No. 23-UI-222934 at 10. The record does not support this conclusion and the order under review is modified accordingly.

Willful Misrepresentation and Penalty Disqualification. Under ORS 657.215, “[a]n individual is disqualified for benefits for a period not to exceed 52 weeks whenever the Director of the Employment Department finds that the individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits[.]” The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052 (January 11, 2018), which provides, in pertinent part:

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

- (a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.
- (b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

* * *

The record shows that claimant willfully made a false statement to obtain benefits when, during the week following week 23-20, he claimed benefits for week 23-20 and falsely answered “no” to the question “Did you quit a job last week?” The statement was false because claimant quit working for Pint Pot Public House during week 23-20 in order to move in with his parents. More likely than not, claimant made the false statement willfully to obtain benefits, rather than because of an error. Although claimant was motivated to quit because he was receiving only about four hours of work from the employer per week, it was plain that the employment relationship ended because claimant voluntarily left and that claimant was aware of the fact that he had quit. The record shows that, prior to week 23-20, the Department’s basic knowledge review tests repeatedly quizzed claimant on the eligibility question “Did you quit a job last week?” and that claimant scored a correct answer each time. Claimant’s familiarity with the question suggests that the inaccurate answer he gave in response to it was given intentionally to obtain benefits, and not by mistake. The preponderance of evidence therefore supports that claimant made the false statement willfully to obtain benefits.

Claimant also made a false statement to obtain benefits when he reported on his restart form during week 27-21 that he had been laid off for lack of work from his job for the employer 89 Steak House. The statement was false because claimant quit working at 89 Steak House on June 26, 2021 in order to relocate to his sister’s property. More likely than not, claimant made the false statement willfully to obtain benefits, rather than because of an error. The work separation from 89 Steak House could not be mistaken for a lack of work because during his employment for 89 Steak House, claimant received about 20 to 30 hours of work per week.⁵ Given that claimant’s job at 89 Steak House provided steady hours

⁵ EAB has taken notice of this fact, which is contained in EAB Decision 2023-EAB-0531 issued on June 14, 2023. 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.

and that claimant chose to quit that job to relocate to his sister's property, the preponderance of evidence supports that claimant falsely reported lack of work intentionally to obtain benefits.

Therefore, claimant is subject to the penalty disqualification period set forth by ORS 657.215 as calculated by the method in OAR 471-030-0052. Claimant was not overpaid benefits as a result of his false statements because his work separations were not disqualifying, despite his misrepresentations. Nevertheless, claimant willfully made misrepresentations to obtain benefits and calculation of the penalty disqualification is not contingent upon whether claimant was overpaid. OAR 471-030-0052(1)(b) must be used to calculate the length of the penalty disqualification because claimant's misrepresentation related to the provisions of ORS 657.176. ORS 657.176 involves disqualifications because of work separations such as voluntarily leaving work without good cause. *See* ORS 657.176(2)(c). Therefore, under OAR 471-030-0052(1)(b), the number of weeks of disqualification is the number of weeks calculated via the manner set forth by OAR 471-030-0052(1)(a), or four weeks, whichever is greater.

Since claimant was not overpaid, calculating the penalty weeks via the manner set forth by OAR 471-030-0052(1)(a) yields a calculation of zero weeks. Four weeks are greater than zero weeks. Accordingly, pursuant to ORS 657.215 and OAR 471-030-0052(1)(b), claimant is subject to a 4-week penalty disqualification from future benefits.

To summarize, Order No. 23-UI-222934 is modified. Claimant was not overpaid benefits. Claimant is not liable for a monetary penalty. Claimant is liable for a 4-week penalty disqualification from future benefits.

DECISION: Order No. 23-UI-222934 is modified, as outlined above.

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

DATE of Service: June 14, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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