

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0633

Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On January 10, 2023, 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 \$628 in regular unemployment insurance (regular UI) benefits and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) that claimant was required to repay to the Department, a \$274.20 monetary penalty, and an 11-week penalty disqualification from future benefits (decision # 200113). Claimant filed a timely request for hearing. On May 17, 2023, ALJ Clemons conducted a hearing, and on May 26, 2023 issued Order No. 23-UI-226279, modifying decision # 200113 by assessing an overpayment of \$628 in regular UI benefits and \$1,200 in FPUC¹ benefits that claimant was liable to repay to the Department by deduction from future benefits, but concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and therefore was not liable for a monetary penalty or penalty disqualification. On June 2, 2023, the Department filed an application for review with the Employment Appeals Board (EAB).

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

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portions of the order under review concluding that claimant was overpaid \$628 in regular UI benefits and \$1,200 in FPUC benefits, but that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits and therefore is not liable for a monetary penalty or penalty

¹ Order No. 23-UI-226279 erroneously referred to the FPUC benefits as Pandemic Unemployment Emergency Compensation (PEUC) benefits. Order No. 23-UI-226279 at 6.

disqualification is **adopted**. The rest of this decision addresses whether claimant is liable for repayment of the regular UI overpayment under ORS 657.310(1) or ORS 657.315(1).

FINDINGS OF FACT: (1) On January 28, 2021, claimant filed an initial claim for unemployment insurance benefits. Her claim was determined to be valid with a weekly benefit amount of \$157.

(2) On February 22, 2021, claimant began working for Monument Health. During this first paid day of work, claimant underwent a medical screening and was scheduled to receive vaccinations required for employment. During that day, claimant declined to receive the vaccinations that the employer told her were required.

(3) On February 23, 2021, claimant submitted a written resignation to the employer with immediate effect, due to her concerns over the vaccination requirements. Claimant did not work for the employer that day or thereafter.

(4) On March 3, 2021, claimant filed a request to restart her claim for benefits with the Department. In it, she stated that her employment with Monument Health ended due to her being laid off for lack of work. Claimant believed that since she had not started performing the job duties for which she was hired, she neither voluntarily quit work nor was discharged from work, and therefore thought that this characterization was the most appropriate.

(5) Claimant filed claims for benefits for the weeks including February 21, 2021 through February 27, 2021 (week 08-21), March 7, 2021 through March 13, 2021 (week 10-21), March 21, 2021 through March 27, 2021 (week 12-21), and April 4, 2021 through April 10, 2021 (week 14-21). These are the weeks at issue. For each week at issue, the Department paid claimant \$157 in regular UI benefits and \$300 in FPUC benefits, totaling \$628 and \$1,200, respectively.

(6) On October 18, 2022, the Department issued decision # 115652, concluding that claimant voluntarily quit working for Monument Health without good cause and was therefore disqualified from receiving unemployment insurance benefits effective February 21, 2021. Decision # 115652 subsequently became final without claimant having filed a request for hearing. Claimant remained disqualified from receiving benefits through at least week 14-21.

CONCLUSIONS AND REASONS: Claimant was overpaid \$628 in regular UI benefits and \$1,200 in FPUC benefits that she is required to repay to the Department.

Overpayment of regular UI benefits. 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. *Id.*

ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a

decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

The order under review concluded that claimant was liable under ORS 657.315(1) to have the amount of her regular UI overpayment deducted from future benefits as the only means of recovery. Order No. 23-UI-226279 at 6. The record does not support this conclusion.

Claimant's overpayment was caused by her having made a false statement to the Department. Claimant reported to the Department that her February 23, 2023 work separation resulted from being laid off due to lack of work. In fact, claimant voluntarily quit work by submitting a letter of resignation to the employer. Therefore, claimant's statement regarding the work separation was false. Claimant was paid regular UI benefits for the weeks at issue based on her characterization of the separation as a layoff. Claimant was not entitled to those benefits, and was therefore overpaid them, because ultimately the work separation was determined to be a voluntary leaving without good cause and claimant was disqualified from receiving benefits for those weeks. Accordingly, because claimant was overpaid benefits as a result of her false statement, she is not eligible under ORS 657.315(1) to have the amount of the overpayment be deducted from future benefits as the Department's only means of recovering the overpayment.

Therefore, under 657.310(1), claimant is liable to repay the regular UI benefit overpayment or have the amount of the overpaid benefits deducted from any future benefits otherwise payable to claimant during the five-year period following the date decision # 200113 becomes final.

DECISION: Order No. 23-UI-226279 is modified, as outlined above.

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

DATE of Service: July 10, 2023

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications. To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "State UI Overpayment Waiver". To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "Federal Program Overpayment Waiver".

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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