

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0655

Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On September 2, 2021, 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 \$15,851 in regular unemployment insurance (regular UI) benefits, \$9,716 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, \$13,500 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, an \$11,720.10 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On May 17, 2023, ALJ Janzen conducted a hearing, and on May 19, 2023 issued Order No. 23-UI-225454, modifying the September 2, 2021 administrative decision by concluding that claimant was liable for an overpayment of \$16,996 in regular UI benefits, \$9,716 in PEUC benefits, \$15,000 in FPUC benefits, and \$1,800 in LWA benefits that he was required to repay to the Department, but that he had not made a willful misrepresentation of material fact to obtain benefits, and therefore was not liable for a monetary penalty or a penalty disqualification from future benefits. On June 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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

In its written argument, the Department asserted that the order under review incorrectly calculated the amounts of claimant's overpaid regular UI and FPUC benefits, suggesting that the correct figures should be \$16,032 (rather than \$16,996) in regular UI benefits and \$13,500 (rather than \$15,000) in FPUC benefits. Department's Written Argument at 1. The record supports the conclusion that claimant was only overpaid \$13,500, rather than \$15,000, in FPUC benefits. *See Exhibit 1 at 5–6.*

However, the record shows that claimant was only overpaid \$15,851 in regular UI benefits, rather than either the \$16,996 figure cited in the order under review or the \$16,032 figure cited in the Department's written argument. Order No. 23-UI-225454 at 12; Exhibit 1 at 5–6. The Department did not explain how it reached the \$16,032 figure cited in the written argument. As such, this figure is presumed to be the result of a miscalculation.

Likewise, the order under review found that claimant was paid a total of \$17,129 in regular UI benefits for the period at issue, but was “only entitled to receive \$133.00 in regular benefits during those weeks[.]” Order No. 23-UI-225454 at 7. In fact, the record (in particular, the schedule of adjustments attached to the September 2, 2021 administrative decision) shows that claimant was only paid a total of \$16,465 in regular UI benefits, of which \$15,851 was overpaid. Exhibit 1 at 5–6. Furthermore, the order under review incorporated by reference the schedule of adjustments. Order No. 23-UI-225454 at 3; Exhibit 1 at 5–6. Therefore, where the figures cited elsewhere in the order under review conflict with the schedule of adjustments, the former are presumed to be the result of miscalculations.

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 had not made a willful misrepresentation of material fact to obtain benefits, and therefore was not liable for a monetary penalty or a penalty disqualification from future benefits is **adopted**. The remainder of the order under review is also adopted, except where the overpayment amounts in the order under review conflict with the figures found in the schedule of adjustments. Therefore, claimant is liable for an overpayment of \$15,851 in regular UI benefits, \$9,716 in PEUC benefits, \$13,500 in FPUC benefits, and \$1,800 in LWA benefits that he is required to repay to the Department.

DECISION: Order No. 23-UI-225454 is modified, as outlined above.

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

DATE of Service: July 20, 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.

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”.

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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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