

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0658

Amended Order No. 23-UI-226384 Reversed
Order No. 23-UI-222602 Remains Undisturbed

PROCEDURAL HISTORY: On January 12, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$16,200 in regular unemployment insurance (regular UI) benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 133859). Claimant filed a timely request for hearing. On April 5, 2023, ALJ Nyberg conducted a hearing, and on April 19, 2023 issued Order No. 23-UI-222602, reversing decision # 133859 by concluding that claimant had not been paid benefits to which he was not entitled, and that he therefore was not liable for an overpayment of benefits. On May 9, 2023, Order No. 23-UI-222602 became final without any party having filed an application for review with the Employment Appeals Board (EAB).

On May 30, 2023, ALJ Nyberg issued Amended Order No. 23-UI-226384, correcting errors made in Order No. 23-UI-222602 to conclude that claimant had been overpaid \$16,200 in regular UI benefits and \$10,200 in FPUC benefits that he was required to repay to the Department, thereby affirming decision # 133859. On, June 8, 2023, claimant filed a timely application for review of Amended Order No. 23-UI-226384 with EAB.

FINDINGS OF FACT: (1) On April 19, 2023, ALJ Nyberg issued Order No. 23-UI-222602. In relevant part, that order found that the underlying administrative decision which created the overpayment at issue in decision # 133859 had been reversed after a hearing, resulting in the conclusion that claimant was not disqualified from receiving benefits based on the work separation at issue. Order No. 23-UI-222602 at 2. Based on this finding, Order No. 23-UI-222602 concluded that claimant was not liable for an overpayment of benefits. Order No. 23-UI-222602 at 4.

(2) On May 9, 2023, Order No. 23-UI-222602 became final without the Department or claimant having filed an application for review with EAB.

(3) On May 30, 2023, ALJ Nyberg issued Amended Order No. 23-UI-226384, which corrected 23-UI-222602 by explaining that claimant had failed to file a timely request for hearing on the underlying

separation decision, that claimant's late request for hearing on that decision had been dismissed as late without a showing of good cause, that the underlying separation decision remained undisturbed, and that the disqualification therefore remained in effect. Amended Order No. 23-UI-226384 at 2. As a result of these findings, the amended order concluded that claimant had been overpaid regular UI and FPUC benefits as determined by decision # 133859, thereby affirming that decision. Amended Order No. 23-UI-226384 at 5-6.

CONCLUSIONS AND REASONS: The ALJ lacked jurisdiction to issue Amended Order No. 23-UI-226384. Order No. 23-UI-222602 remains undisturbed.

ORS 657.270(6) states, in relevant part, that the decision of an administrative law judge is final unless the Department or any other party to the hearing files an application for review with the Employment Appeals Board within 20 days after the delivery of the notice under ORS 657.270(4), or if mailed, within 20 days after the notice was mailed to the party's last-known address. OAR 471-040-0030(5) (August 1, 2004) states, in relevant part, that an administrative law judge may issue an amended decision prior to the previous decision becoming final.

Order No. 23-UI-222602 found that the underlying administrative decision which created the overpayment at issue in decision # 133859 had been reversed, and that claimant therefore had not been paid benefits to which he was not entitled. Those findings were apparently erroneous, as the amended order under review, issued three weeks after Order No. 23-UI-222602 became final, found instead that claimant did not show good cause for filing a late request for hearing on the underlying decision, that the merits of that decision had never been heard, and that the disqualification determined by that decision remained in effect. The record does not show when or how the ALJ became aware of the error, or why it took so long to issue the amended order. Nevertheless, the ALJ lacked jurisdiction to issue the amended order because it was not issued before the original order became final.

Under OAR 471-040-0030(5), an ALJ may issue an amended order prior to the previous decision becoming final. There is no indication in the record that any party, including the Department, filed an application for review of the original order, Order No. 23-UI-222602, within the 20 days permitted by ORS 657.270(6), or at any later time. Order No. 23-UI-222602 therefore became final on May 9, 2023. Nor does the record show that Order No. 23-UI-222602 was amended prior to becoming final on May 9, 2023. Because the ALJ did not issue the amended order until three weeks after the original order became final, the ALJ lacked jurisdiction to issue the amended order. As such, Amended Order No. 23-UI-226384 is reversed for lack of jurisdiction, and Order No. 23-UI-222602 remains undisturbed.

DECISION: Amended Order No. 23-UI-226384 is set aside, as outlined above.

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

DATE of Service: July 21, 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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