

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0705

Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On April 5, 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 \$7,884.00 in regular unemployment insurance (regular UI) and \$9,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, a \$5,065.20 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On June 7, 2023, ALJ Fraser conducted a hearing, and on June 8, 2023 issued Order No. 23-UI-227356, affirming the April 5, 2023 administrative decision. On June 22, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant was overpaid \$7,884.00 in regular UI benefits and \$9,000.00 in FPUC benefits is **adopted**. The remainder of this decision addresses whether claimant made a willful misrepresentation in order to obtain benefits.

FINDINGS OF FACT: (1) On April 1, 2020, claimant filed an initial claim for regular UI benefits. The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of \$498.00. Claimant had never previously filed a claim for unemployment benefits.

(2) Claimant claimed regular UI benefits for the weeks from March 22 through July 11, 2020 (weeks 13-20 through 28-20). These are the weeks at issue. For each of the weeks at issue except the week of April 12 through 18, 2020 (week 16-20), the Department paid claimant her full weekly benefit amount of \$498.00 in regular UI benefits. For week 16-20, the Department paid claimant \$414.00 in regular UI benefits. For each of the weeks at issue except for the week of March 22 through 28, 2020 (week 13-20), the Department also paid claimant \$600.00 in FPUC benefits.

(3) During all of the weeks at issue, both Mt. Angel Fire District (“Mt. Angel”) and DK Fabrications (“DK”) employed claimant. Claimant worked a varying amount of hours each week for Mt. Angel, and was paid \$25.00 per hour for that work. Claimant worked for Mt. Angel for 12 out of the 16 weeks at issue, earning a total of \$1,087.50 with that employer during those weeks. DK Fabrications paid claimant an annual salary of \$36,000.00, or \$692.30 per week, regardless of how much claimant worked during any individual week. Claimant primarily worked from home for these employers during the weeks at issue. For each of the weeks at issue, claimant’s earnings from these two employers exceeded her weekly benefit amount.

(4) Prior to the COVID-19 pandemic, claimant was also self-employed as a real estate agent. While claimant continued to be self-employed during the weeks at issue, claimant “had to stay home with [her] kids and [she] wasn’t able to work” on her real estate self-employment during the weeks at issue. Transcript at 18. As a result, claimant had no self-employment earnings during the weeks at issue.

(5) When claimant filed her weekly claims for each of the weeks at issue, the claim form asked claimant if she worked or had earnings, and prompted her to report her earnings, if any, for the week. The Department’s Claimant Handbook also explained that claimants were required to report weekly earnings when claiming benefits. Claimant misunderstood these explanations to mean that she was required to “report only lost wages” on her weekly claim forms. Transcript at 18. Claimant’s misunderstanding was based, in part, on guidance issued for the Pandemic Unemployment Assistance (PUA) program.¹ Claimant’s misunderstanding was also based, in part, on advice that a Department representative gave her during a call, in which she was “told that [she] was supposed to report a deduction in earnings.” Transcript at 19.

(6) As a result of claimant’s misunderstanding regarding her duty to report earnings during the weeks at issue, claimant only reported earnings for three of the weeks at issue. For week 13-20, claimant reported \$150.00 in earnings. For week 16-20, claimant reported \$250.00 in earnings. For the week of May 3 through 9, 2020 (week 19-20), claimant reported \$75.00 in earnings.

(7) The Department paid claimant benefits for each of the weeks at issue because it initially believed, based on claimant’s reports, that she did not have earnings which exceeded her weekly benefit amount during those weeks. Mt. Angel and DK later supplied the Department with claimant’s correct earnings

¹ The record indicates that claimant was not eligible for PUA benefits during the weeks at issue because she was eligible for regular UI benefits at that time. *See* 15 U.S.C. § 9021(a)(3)(A)(i).

for the weeks at issue, leading the Department to determine that claimant was not eligible to receive benefits for any of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant did not make willful misrepresentations of material fact in order to obtain benefits, and is not liable for a monetary penalty or a penalty disqualification from future 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.* 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.

The Department overpaid claimant benefits for the weeks at issue because claimant misreported, or failed to report, her weekly earnings during those weeks. The order under review concluded that claimant's failure to correctly report her earnings during the weeks at issue constituted willful misrepresentations of material fact, reasoning:

Though she was confused about what she needed to report, claimant was asked each week she claimed for benefits if she had earnings or hours to report. Each week she either claimed "0 earnings or hours" or reported drastically lower earnings than what she earned. Because claimant reported some earnings during the weeks at issue, this shows that claimant understood she needed to claim earnings. * * * Claimant testified that a representative at the Department informed her that she only needed to claim lost wages. I am not persuaded by this since claimant did not know whom she talked to at the Department. * * *

Order No. 23-UI-227356 at 5–6. This analysis is not supported by substantial reason. Claimant's exact line of reasoning that led her to misreport her earnings during the weeks at issue is somewhat difficult to parse, and as a result it is not clear from the record what the earnings figures she reported during weeks 13-20, 16-20, and 19-20 were meant to represent. Nevertheless, claimant consistently testified at hearing that she misreported her earnings due to her mistaken belief that she was "to report only lost wages," rather than wages she *earned*. Transcript at 18. The record suggests that claimant reported similarly when she spoke to one of the Department's investigators prior to the issuance of the April 5, 2023 overpayment decision. *See* Transcript at 7–8. This explanation is uncontroverted in the record. Thus, while the order under review suggested that claimant understood that she was required to report her weekly earnings because she had "reported some earnings during the weeks at issue," the better explanation for claimant's misreported earnings is that the earnings she *did* report were reported in line with the same mistaken belief—i.e., that she reported wages that she believed she had *lost*, rather than wages she had *earned*.

Furthermore, the record shows that claimant had never filed a claim for unemployment insurance benefits prior to the initial claim she filed in April 2020. While it is certainly possible for a first-time claimant to correctly report their weekly earnings while claiming benefits, claimant's lack of familiarity with the process of claiming benefits lends further credibility to her assertion that her misreported earnings were due to a misunderstanding rather than a willful misrepresentation.

Finally, the order under review suggested that claimant's explanation—that her misunderstanding was informed by information that a Department representative gave to her—was not credible because “claimant did not know whom she talked to at the Department.” At hearing, claimant did testify that she “did not write down [the] name” of the Department representative she spoke to who purportedly told her that she was only “supposed to report a deduction in earnings” rather than the wages she actually earned. Transcript at 19–20. The hearing took place in June 2023, presumably some three years after she spoke to the Department representative. It simply does not follow logically to assert that claimant's inability to remember the name of a person she spoke to three years ago is proof that she never spoke to that person in the first place. Thus, in the absence of actual evidence to the contrary, it is reasonable to conclude that the call took place, and that advice was given. Whether the Department representative actually advised claimant to report only her “deduction in earnings,” rather than actual wages earned, is immaterial for purposes of determining whether claimant willfully misrepresented herself to obtain benefits. What *is* relevant is that claimant acted on what she understood that advice to mean, and the evidence in the record is, in that regard, uncontroverted.

For the above reasons, claimant's failure to accurately report her earnings during the weeks at issue was, at worst, the result of her own negligence. Therefore, the Department has not met its burden to show that the overpayment at issue in this matter was caused by claimant's willful misrepresentation of material fact. As such, claimant is not liable for a monetary penalty or penalty disqualification from future benefits.

DECISION: Order No. 23-UI-227356 is modified, as outlined above.

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

DATE of Service: August 3, 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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