

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0747

Affirmed
Overpayment Not Assessed

PROCEDURAL HISTORY: On January 21, 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 received \$21,951 in Pandemic Unemployment Assistance (PUA) benefits, \$21,000 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, plus a \$12,885.30 monetary penalty. On February 10, 2022, the January 21, 2022 administrative decision became final without claimant having filed a request for hearing. On March 9, 2022, claimant filed a late request for hearing. On April 7, 2023 and continued to June 7, 2023, ALJ Lucas conducted a hearing. On June 15, 2023, ALJ Lucas issued Order No. 23-UI-227974, concluding that claimant's request for hearing was timely and reversing the January 21, 2022 administrative decision by concluding that claimant did not willfully make misrepresentations to obtain benefits, did not have earnings which would reduce the weekly benefit amount, was not overpaid PUA, FPUC, or LWA benefits, and was not liable for a monetary penalty. On July 5, 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. In it, the Department stated that its appeal is limited to the issue of whether claimant was eligible to receive PUA benefits for the weeks of February 6, 2020 through April 25, 2020 (weeks 06-20 through 17-20). Department's Written Argument at 1. The Department argued that claimant was not eligible to receive PUA benefits for weeks 06-20 through 17-20, and therefore was overpaid for those weeks, because his earnings for each of weeks 06-20 through 17-20 exceeded his weekly benefit amount. Department's Written Argument at 1.

It is correct that a PUA claimant, once they have established status as a covered individual, is only eligible to receive PUA benefits for "weeks of . . . unemployment[.]" 15 U.S.C. § 9021(b). Regulations at 20 C.F.R. part 625, which pertain to the Disaster Unemployment Assistance program, apply to the PUA program, unless otherwise provided or contrary to the Act. 15 U.S.C. § 9021(h). Section 625.2(w) of those regulations excludes from the term "[w]eek of unemployment" any week in which an individual's earnings exceed "the maximum earnings allowance prescribed in the applicable State law."

The provision of Oregon law applicable to weeks 06-20 through 17-20 prescribes a maximum earnings allowance in that, to be eligible for benefits, an individual's weekly earnings are not to exceed their weekly benefit amount. *See* ORS 657.100(1). Thus, if a PUA claimant's earnings in a week exceed their weekly benefit amount, that week does not amount to a "[w]eek of unemployment", and they are not eligible to receive PUA benefits for that week pursuant to 15 U.S.C. § 9021(b).

However, in a separate case, reference no. 2022-UI-55394, ALJ Lucas adjudicated claimant's eligibility for PUA benefits, and issued Order No. 23-UI-221821, concluding that claimant was eligible to receive PUA benefits for weeks 06-20 through 17-20, among other weeks. *See* Order No. 23-UI-221821 at 4.¹ In that case, the Department asserted that claimant had earnings that exceeded his weekly benefit amount for weeks 06-20 through 17-20 and argued that claimant was not eligible for PUA principally on the basis that he was not unemployed due to a qualifying COVID-19 reason, but also because of excess earnings. Order No. 23-UI-221821, Audio Record at 36:05 to 35:58, 43:40. Thereafter, on April 12, 2023, the ALJ issued Order No. 23-UI-221821, concluding that claimant was eligible to receive PUA benefits for weeks 06-20 through 17-20, among other weeks. The Department initially filed an application for review, but withdrew its application on May 11, 2023. Order No. 23-UI-221821 subsequently became final and binding as a matter of law.

Thus, the Department raised its argument that claimant was ineligible due to excess earnings in another case; Order No. 23-UI-221821 rejected that contention; and the Department ultimately decided not to appeal that order. Given that the Department had an opportunity to appeal but declined to do so, and that claimant's PUA eligibility for weeks 06-20 through 17-20 is now final and binding as a matter of law, it would not be appropriate to revisit claimant's eligibility to receive PUA benefits for weeks 06-20 through 17-20 in this case.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 23-UI-227974 is affirmed.

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

DATE of Service: August 17, 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.

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

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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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