

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0754-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0754 Adhered to on Reconsideration

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 24, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$2,611 in Extended Benefits (EB) to which she was not entitled and must repay by deduction from future benefits payable (decision # 161517). On July 14, 2022, decision # 161517 became final without claimant having filed a request for hearing. On November 15, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 21, 2023, issued Order No. 23-UI-219655, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 4, 2023. On April 4, 2023, claimant filed a timely response to the appellant questionnaire. On April 25, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-219655 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 161517.

On May 30 and June 22, 2023, ALJ Lucas conducted a hearing, and on June 26, 2023, issued Order No. 23-UI-228642, allowing claimant's late request for hearing and affirming decision # 161517. On July 6, 2023, claimant filed an application for review of Order No. 23-UI-228642 with the Employment Appeals Board (EAB). On August 23, 2023, EAB issued EAB Decision 2023-EAB-0754, modifying Order No. 23-UI-228642 by concluding that claimant was not liable for an overpayment of benefits that she was required to repay to the Department. On September 12, 2023, the Department filed a request for reconsideration of EAB Decision 2023-EAB-0754. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0754 is adhered to as clarified herein.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment

Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

The Department filed its request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed.

On June 24, 2022, the Department issued an administrative decision concluding that claimant received EB benefits to which she was not entitled and assessed an overpayment totaling \$2,611 that claimant was required to repay for the weeks from October 25 through December 12, 2020 (decision # 161517). After a hearing on the merits of the decision, OAH issued Order No. 23-UI-228642, affirming the overpayment decision. The decision under reconsideration reversed Order No. 23-UI-228642 because the overpayment decision amended the decision to pay claimant more than a year after the decisions to pay had been made and is barred by ORS 657.267(4). EAB Decision 2023-EAB-0754 at 3-5.

In its request for reconsideration, the Department assigns error to this decision, asserting that despite the fact that more than a year had passed after the original decisions to allow payment, it nevertheless had authority to issue the overpayment decision, explaining, in relevant part:

...OED issued an overpayment decision (# 161517) on June 24, 2022, which concluded that the claimant received Extended Benefits (EB) to which they were not entitled. While it's correct that this decision was issued more than 12 months after the weeks paid, it merely informs the claimant of an overpayment that resulted from a **prior** denying separation decision (# 111649). Nothing about decision # 161517 amended or altered decision # 111649, which became final after June 17, 2021. Prior payments for the period at issue which were disqualified through decision # 111649 were made within 12 months of the disqualification. Therefore, the Department had authority to deny the weeks at issue with no continuous jurisdiction necessary and the overpayment should stand.

Oregon Employment Department's Request for Reconsideration at 1 (emphasis in original).

The Department does not cite to any authority to support its argument that the overpayment decision “merely informs the claimant of an overpayment that resulted from” decision # 111649, or that decision # 111649 is the amendment to the Department's previous decisions to pay claimant. Decision # 111649 did not reverse the decisions to pay claimant. Instead, decision # 111649 only concluded that claimant was not eligible for EB benefits. Decision # 111649 did not conclude that claimant was overpaid or was required to repay benefits for any of the weeks at issue. The overpayment decision, however, amends the decision to pay by reversing the payment decisions and requiring claimant to repay benefits received by deduction from future benefits payable during the five-year period following the week in which the overpayment decision becomes final. The overpayment decision therefore is not merely informational. Instead, it creates a financial liability to claimant, in the amount of thousands of dollars, to last years after the payments were made, when the payments were not made due to a willful misrepresentation or fraud, but because the Department had made the payments in error. The plain language on the Department's administrative decision further strengthens this position because the overpayment decision issued by the Department specifically cites to ORS 657.267. In contrast, decision # 111649 does not cite

to ORS 657.267 as authority, but cites to state and federal law authorizing the Extended Benefits program instead. Moreover, ORS 657.267(4) excludes amendments in cases of alleged fraud from the one-year time limitation. This implies that overpayment decisions, whether they be fraud, claimant fault but non-fraud, or agency error, are what the statute contemplates as the amendment of the original decisions to allow payment. Since the one enumerated (but excepted) type of case, an alleged case of fraud, takes the form of an overpayment decision, it follows that the one-year time limitation applies to claimant fault but non-fraud and agency error cases, and that ORS 657.267(4) contemplates the overpayment decisions that give rise to those kinds of cases as the amendment.

A review of the legislative history of ORS 657.267(4) lends further support to the conclusion that overpayment decisions amend payment decisions. The one-year time limit was added to the language of the statute out of concern that it would be inequitable to allow the Department to assess overpayments years after payment in cases where claimant made an honest mistake. If ORS 657.267(4) is construed to permit the Department to assess non-fraud overpayments without a time limitation, the practical effect is that the Department could be allowed to assess overpayments years after the circumstances giving rise to the overpayment occurred, contrary to the one-year time limit in the language of the statute.

The Department's request for reconsideration does not show that EAB Decision 2023-EAB-0754 contained an error of material fact or law, and does not offer support for its position. EAB Decision 2023-EAB-0754 therefore is adhered to on reconsideration.

DECISION: The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0754 is adhered to as clarified herein.

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

DATE of Service: October 30, 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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