

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0801

Modified
Late Request for Hearing Allowed
No Overpayment Assessed

PROCEDURAL HISTORY: On August 10, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$1,570 in regular unemployment insurance (regular UI) benefits and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 145806). On August 30, 2022, decision # 145806 became final without claimant having filed a request for hearing. On December 17, 2022, claimant filed a late request for hearing on decision # 145806. ALJ Kangas considered claimant's request, and on May 3, 2023 issued Order No. 23-UI-223843, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 17, 2023. On May 9, 2023, claimant filed a timely response to the appellant questionnaire. On June 1, 2023, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 23-UI-223843 was vacated and that a hearing would be scheduled to determine if claimant had good cause to file her request for hearing late and, if so, the merits of decision # 145806.

On June 27, 2023, ALJ Nyberg conducted a hearing, and on July 5, 2023 issued Order No. 23-UI-229461, allowing claimant's late request for hearing and affirming decision # 145806 on the merits. On July 19, 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 reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing is **adopted**. The rest of this decision addresses the assessment of an overpayment.

FINDINGS OF FACT: (1) On April 16, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined the claim to be monetarily valid with a regular UI weekly benefit amount of \$157 and an effective date of March 14, 2021. Claimant stated in her claim that she continued to work for her last employer and had not separated from employment.

(2) Claimant filed weekly claims for the weeks including March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21) and for each week was paid \$157 in regular UI benefits and \$300 in FPUC benefits, totaling \$1,570 and \$3,000, respectively. The Department made each of these payments on or before May 24, 2021.¹

(3) On June 4, 2021, the Department issued an administrative decision concluding that claimant had voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective January 24, 2021. Claimant timely requested a hearing on the administrative decision, however her request was later dismissed for failure to appear at the hearing. Claimant subsequently filed a late request to reopen the hearing, which was denied. The order denying claimant's late request to reopen became final on January 31, 2023.²

(4) Claimant did not earn any remuneration for work performed from January 25, 2021 through May 22, 2021.

(5) On August 10, 2022, the Department issued decision # 145806, assessing an overpayment of \$1,570 in regular UI benefits and \$3,000 in FPUC benefits that claimant was required to repay to the department. Decision # 145806 alleged that this overpayment occurred because claimant "failed to disclose" the January 24, 2021 separation from employment in her initial application for benefits, but did not allege that the overpayment was caused by fraud or misrepresentation. Exhibit 1 at 1.

CONCLUSIONS AND REASONS: The Department was not authorized to amend the original decisions allowing benefits for weeks 11-21 through 20-21 or assess an overpayment for those weeks. Claimant was not overpaid benefits.

Lack of Authority to Amend Allowing Decisions for Weeks 11-21 through 20-21. ORS 657.267 provides:

(1) *An authorized representative shall promptly examine each claim* for waiting week credit or for benefits *and, on the basis of the facts available, make a decision to allow or deny the claim.* Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). 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.

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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 facts will remain in the record.

accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. ***Notice of the decision need not be given to the claimant if the claim is allowed*** but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.

(2) If the claim is denied under any provision of ORS 657.176, written notice of the decision must be given to the employing unit, or to the agent of the employing unit, that, in the opinion of the Director of the Employment Department, is most directly involved with the facts and circumstances relating to the disqualification.

(3) Notice of a decision that was wholly or partially based on information filed with the director in writing within 10 days after the notice provided for in ORS 657.265 must be given to any employing unit or agent of the employing unit that filed the information.

(4) ***If a decision to allow payment made pursuant to this section does not require notice, that decision may be amended by an authorized representative.*** The amendment must be made by written notice informing the recipient of the right of appeal pursuant to ORS 657.269. ***The amendment must be issued within one year of the original decision to allow payment, except in cases of alleged willful misrepresentation or fraud.*** A decision requiring notice, made pursuant to this section, may be amended unless it has become a final decision under ORS 657.269.

(Emphasis added.)

ORS 657.176 provides, in relevant part:

* * *

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

* * *

(c) Voluntarily left work without good cause[.]

* * *

Order No. 23-UI-229461 concluded that claimant was overpaid \$1,570 in regular UI benefits and \$3,000 in FPUC benefits for the weeks of March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21).

Order No. 23-UI-229461 at 6. The record does not demonstrate that the Department had authority to amend its original decision to allow payment to a decision denying claimant benefits, and therefore assess an overpayment, for those weeks.

The Department made its original decisions under ORS 657.267(1) to allow payment of claimant's weekly claims for benefits for the weeks of March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21), by paying each of these claims, on or before May 24, 2021. Because a decision to allow benefits does not require notice to claimant pursuant to ORS 657.267(1), the Department may only amend decisions allowing benefits (*i.e.*, by denying benefits) within one year of the decision to allow, in the absence of "alleged willful misrepresentation or fraud." ORS 657.267(4).

The Department issued an administrative decision on June 4, 2021, disqualifying claimant from benefits effective January 24, 2021, as the result of a work separation. By law, such a disqualification ends when an individual has "performed service in employment . . . for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred[.]" ORS 657.176(2). The June 4, 2021 administrative decision did not amend the Department's original decisions to allow claimant's claims each week for weeks 11-21 through 20-21 because it did not purport to assess whether claimant had requalified for benefits each week and, accordingly, whether each weekly claim was allowed or denied on that basis.

On August 10, 2022, the Department issued decision # 145806, concluding that claimant was not entitled to receive the benefits she received for the weeks including March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21) based on the disqualification imposed in the June 4, 2021 administrative decision. Decision # 145806 effectively constituted a decision to deny those weekly claims based on the Department's implicit conclusion that claimant *remained* disqualified from receiving benefits during those weeks. Decision # 145806 therefore constituted an amendment to each original decision to allow payment of those weekly claims by now denying them.³ However, because more than a year had elapsed since the decisions to allow these weekly claims had been made by paying them, the Department lacked authority to amend them pursuant to ORS 657.267(4), unless alleging willful misrepresentation or fraud.

Decision # 145806 alleged that claimant was disqualified from and therefore overpaid benefits for the weeks at issue because she failed to disclose the material fact that she had separated from employment in January 2021. As the Department did not allege that the amended decision to deny benefits for the weeks at issue was based on willful misrepresentation or fraud in decision # 145806, the Department was therefore subject to the one-year limitation on amending the original decisions to allow benefits imposed by ORS 657.267(4). Accordingly, the Department lacked authority to amend the original decisions which allowed benefits to decisions denying claimant benefits for weeks 11-21 through 20-21, and in turn, to assess an overpayment of benefits for those weeks. Therefore, claimant was not overpaid benefits.

DECISION: Order No. 23-UI-229461 is modified, as outlined above.

³ Additionally, decision # 145806 cites ORS 657.267, which supports that it is appropriate to regard it as the amendment that amended the original decisions to allow payment in this case. *See* Exhibit 1 at 1.

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

DATE of Service: August 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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