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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0827

Order No. 23-UI-231090 Affirmed
Late Request for Hearing Allowed
Disqualification

Order No. 23-UI-231125 Reversed
No Overpayment

PROCEDURAL HISTORY: On December 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective February 7, 2021 (decision # 130656). On January 11, 2022, decision # 130656 became final without claimant having filed a request for hearing. On January 23, 2023, the Department served notice of an administrative decision based in part on decision # 130656, concluding that claimant was overpaid \$16,037 in regular unemployment insurance (regular UI) and \$8,700 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 160520).

On February 1, 2023, claimant filed a late request for hearing on decision # 130656 and a timely request for hearing on decision # 160520. On July 20, 2023, ALJ Scott conducted separate hearings regarding decisions # 130656 and 160520, and on July 21, 2023 issued Order No. 23-UI-231090 allowing claimant's late request for hearing on decision # 130656 and affirming that decision, and Order No. 23-UI-231125 affirming decision # 160520. On July 27, 2023, claimant filed applications for review of Orders No. 23-UI-231090 and 23-UI-231125 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-231090 and 23-UI-231125. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0827 and 2023-EAB-0828).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing records, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearings as required by OAR 471-041-0090 (May 13, 2019). With the exception of EAB Exhibit 1, below, EAB considered only information received into evidence at the hearings when reaching this decision. *See* ORS 657.275(2). EAB considered claimant's written argument as to Order No. 23-UI-231125 to the extent it was based on the record.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1). The additional evidence consists of decision # 160520, which assessed the overpayment at issue in this matter, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-231090, which allowed claimant's late request for hearing on decision # 130656 and concluded that claimant quit work without good cause, is **adopted**. The remainder of this decision addresses Order No. 23-UI-231125 regarding claimant's overpayment of benefits.

FINDINGS OF FACT: (1) On March 8, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$553.

(2) Claimant claimed benefits for the weeks of February 14 through September 4, 2021 (weeks 07-21 through 35-21). These are the weeks at issue. For each of the weeks from February 14 through August 14, 2021 (weeks 07-21 through 32-21), the Department paid claimant his weekly benefit amount in regular UI benefits, totaling \$14,378. For each of the weeks including August 15 through September 4, 2021 (weeks 33-21 through 35-21), the Department paid claimant his weekly benefit amount in Pandemic Emergency Unemployment Compensation (PEUC) benefits, totaling \$1,659. For all of the weeks at issue, the Department paid claimant \$300 in FPUC benefits per week, totaling \$8,700. The Department paid all of these benefits to claimant between March 2021 and September 2021.¹

(3) Due to an increased workload resulting from the COVID-19 pandemic, the Department paid benefits to claimant for the weeks at issue without first determining whether claimant's separation would disqualify him from benefits. On December 22, 2021, the Department issued decision # 130656, concluding that claimant quit work without good cause and was disqualified from receiving benefits effective February 7, 2021 and until he received payment from an employer in the amount of four times his weekly benefit amount for work performed after that date. Four times claimant's weekly benefit amount of \$553 was \$2,212.

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.

(4) On January 23, 2023, the Department issued decision # 160520, determining that claimant was ineligible for benefits for the weeks at issue due to decision # 130656, which found that claimant quit work without good cause. Order No. 23-UI-231125, Transcript at 8. The Department eventually waived the overpayment of \$14,378 in regular UI benefits, but did not waive the remaining overpayments of PEUC and FPUC benefits, as it determined that claimant had been at fault for the overpayments. However, the Department did not allege that the overpayments were the result of claimant's willful misrepresentation or fraud. Order No. 23-UI-231125, Transcript at 9.

CONCLUSIONS AND REASONS: The Department was not authorized to amend the original decisions allowing benefits for the weeks at issue or assess an overpayment for those weeks.

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 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-231125 concluded that claimant was overpaid benefits for the weeks at issue and liable to repay those benefits to the Department, except where waiver was granted. Order No. 23-UI-231125 at 5. However, the record does not demonstrate that the Department had authority to amend its original decision to allow payment and 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 at issue by paying each of these claims between March 2021 and September 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 within one year of the decision to allow, except in cases of "alleged willful misrepresentation or fraud." ORS 657.267(4).

The Department issued decision # 130656 on December 22, 2021, disqualifying claimant from benefits effective February 7, 2021 as a 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). However, decision # 130656 did not amend the Department's original decisions to allow payment for the weeks at issue partly 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 January 23, 2023, the Department issued decision # 160520, concluding that claimant was not entitled to the benefits he received for the weeks at issue based on the disqualification imposed in decision # 130656. For the following reasons, it is instead appropriate to regard decision # 160520, and not decision # 130656, as the amendment of the original decisions to allow benefits for the weeks at issue.

First, decision # 160520 effectively constituted a decision that payment for the weeks at issue should not have been allowed based on the implicit conclusion that claimant *remained* disqualified from receiving benefits during those weeks. Thus, decision # 160520 constituted an amendment to each original decision to allow payment of those weekly claims by retroactively concluding that payment should not have been allowed.

Next, the effect of decision # 160520 was to reverse the original decisions to allow payment through creation of liability for an overpayment, whereas decision # 130656 merely established the predicate for the resulting overpayment by concluding that claimant was disqualified from receiving benefits effective on a specific date. Further, decision # 160520 actually cited to ORS 657.267, whereas decision # 130656 cited only to ORS 657.176 and the applicable administrative rule, regarding work separations and other disqualifications from benefits. *Compare* EAB Exhibit 1 at 1; Exhibit 1 at 2.

Finally, 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 decision 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 cases 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. Thus, decision # 160520 amended the original decisions to allow benefits for the weeks at issue.

The amendment was made on January 3, 2023, which was not within one year of September 2021. At hearing, the Department’s witness alleged that claimant was at “fault” for the overpayment. Order No. 23-UI-231125, Transcript at 10. However, the record does not show that the Department alleged that claimant *willfully* misrepresented himself or committed fraud. Therefore, claimant’s case was not one of willful misrepresentation or fraud, and the Department was 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 that allowed the payment of benefits to a decision that payment for the weeks at issue should not have been allowed and, in turn, to assess an overpayment of benefits for those weeks.

DECISION: Order No. 23-UI-231090 is affirmed. Order No. 23-UI-231125 is reversed, as outlined above.

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

DATE of Service: September 8, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 الاستئناف 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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