

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0863

Reversed
No Overpayment

PROCEDURAL HISTORY: On December 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received unemployment insurance benefits to which he was not entitled, and assessing an overpayment of \$1,500 in Lost Wages Assistance (LWA) benefits that he was required to repay to the Department (decision # 0564110). Claimant filed a timely request for hearing. On July 10, 2023, ALJ Ramey conducted a hearing, and on July 19, 2023 issued Order No. 23-UI-230766, affirming decision # 0564110. On August 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1). The additional evidence consists of decision # 133113, a September 11, 2020 administrative decision which concluded that claimant had been discharged for misconduct,¹ and decision # 0564110, which assessed the overpayment at issue in this matter. This evidence 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.

FINDINGS OF FACT: (1) On April 14, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount in regular unemployment insurance (regular UI) benefits was \$302.

(2) Claimant claimed benefits for the weeks of July 26, 2020 through August 28, 2020 (weeks 31-20 through 35-20). These are the weeks at issue. For each of the weeks at issue, the Department paid

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.

claimant \$300 in LWA benefits, totaling \$1,500 in LWA benefits for all of the weeks at issue.² All of these benefits were paid on or before August 31, 2020.³

(3) On September 11, 2020, the Department issued decision # 133113, concluding that claimant had been discharged for misconduct and therefore was disqualified from receiving benefits effective March 15, 2020. On October 1, 2020, decision # 133113 became final without claimant having requested a hearing.

(4) On December 15, 2021, the Department issued decision # 0564110, determining that claimant was ineligible for LWA benefits for the weeks at issue due to decision # 133113, which had found that claimant had been discharged for misconduct. The Department determined that the overpayment was claimant's fault.

(5) Claimant later filed a late request for hearing on decision # 133113. On February 24, 2023, following a hearing, the ALJ who heard the matter issued an order dismissing claimant's late request for hearing on decision # 133113, leaving that decision undisturbed. Claimant did not file an application for review of that order with EAB.⁴

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 Although the record suggests that claimant was also paid regular UI benefits during the weeks at issue, any such benefits are not at issue in this matter.

³ 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 fact will remain in the record.

⁴ EAB has taken notice 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) 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:

* * *

(a) Has been discharged for misconduct connected with work[.]

* * *

Order No. 23-UI-230766 concluded that claimant was overpaid benefits for the weeks at issue and liable to repay those benefits to the Department. Order No. 23-UI-230766 at 4. 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 on or before August 31, 2020. 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 # 133113 on September 11, 2020, disqualifying claimant from benefits effective March 15, 2020. 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 # 133113 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 December 15, 2021, the Department issued decision # 0564110, concluding that claimant was not entitled to the benefits he received for the weeks at issue based on the disqualification imposed in decision # 133113. For the following reasons, it is appropriate to regard decision # 0564110, and not decision # 133113, as the amendment of the original decisions to allow benefits for the weeks at issue.

First, decision # 0564110 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 # 0564110 constituted an amendment to each original decision to allow payment of those weekly claims by retroactively concluding that payment should not have been allowed benefits.

Further, the effect of decision # 0564110 was to reverse the original decisions to allow payment through creation of liability for an overpayment, whereas decision # 133113 merely established the predicate for the resulting overpayment by concluding that claimant was disqualified from receiving benefits effective on a specific date.

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 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 # 0564110 amended the original decisions to allow benefits for the weeks at issue.

Decision # 0564110 was not made within one year of August 31, 2020. Instead, it was issued on December 15, 2021, more than a year later. At hearing, the Department’s witness alleged that claimant was at “fault” for the overpayment. Audio Record at 8:25. 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-230766 is set aside, as outlined above.

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

DATE of Service: September 21, 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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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