

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0904

Reversed
Overpayment Not Assessed

PROCEDURAL HISTORY: On May 30, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$604 of Pandemic Emergency Unemployment Compensation (PEUC) and \$1,200 of Federal Pandemic Unemployment Compensation (FPUC) benefits to which she was not entitled and must repay (decision # 91808). Claimant filed a timely request for hearing. On July 26, 2023, ALJ Adamson conducted a hearing and issued Order No. 23-UI-231537, affirming decision # 91808. On August 14, 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 considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On April 17, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits. The Department determined that claimant had a valid claim for benefits with a weekly benefit amount of \$151. Claimant claimed regular UI benefits for a period of time. When these exhausted, the Department extended the claim via the Pandemic Emergency Unemployment Compensation (PEUC) benefits program.¹

(2) Claimant claimed benefits for the weeks from May 9 through June 5, 2021 (weeks 19-21 through 22-21). These are the weeks at issue. The Department paid claimant \$151 of PEUC benefits for each of the weeks at issue, for a total of \$604 of PEUC benefits. The Department paid claimant \$300 of FPUC

¹ 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.

benefits for each of the weeks at issue, for a total of \$1,200 of FPUC benefits. All of these benefits were paid on or before June 7, 2021.²

(3) June 17, 2021, the Department issued decision # 85625, concluding that claimant had quit work without good cause and was disqualified from receiving benefits effective May 2, 2021.³ Claimant did not receive decision # 85625. On July 7, 2021, decision # 85625 became final without claimant having filed a request for hearing.

(4) On May 30, 2023, the Department issued decision # 91808, which concluded that claimant received \$604 of PEUC and \$1,200 of FPUC benefits for the weeks at issue to which she was not entitled and must repay. The Department did not allege that claimant made a willful misrepresentation or committed fraud.

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.

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 fact will remain in the record.

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.

(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-231537 concluded that claimant was overpaid benefits for the weeks at issue and was liable for an overpayment of \$604 of PEUC benefits and \$1,200 of FPUC benefits to be repaid. Order No. 23-UI-231537 at 2-3. However, the record does not demonstrate that the Department had authority to amend its original decision to allow payment and assess an overpayment for the weeks at issue.

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 June 7, 2021. Because the decisions to allow payment did not require notice to claimant pursuant to ORS 657.267(1), the Department may only amend the decisions within one year, except in cases of "alleged willful misrepresentation or fraud." ORS 657.267(4).

The Department issued decision # 85625 on June 17, 2021, disqualifying claimant from benefits effective May 2, 2021. 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 # 85625 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 payment was allowed or denied on that basis.

On May 30, 2023, the Department issued decision # 91808, concluding that claimant was not entitled to the benefits she received for the weeks at issue based on the disqualification imposed in decision # 85625.⁴ For the following reasons, it is appropriate to regard decision # 91808, and not decision # 85625, as the amendment of the original decisions to allow benefits for the weeks at issue.

First, decision # 91808 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 # 91808 constituted an amendment to each original decision to allow payment of those weekly claims by retroactively concluding that payment should not have been allowed.

Further, the effect of decision # 91808 was to reverse the original decisions to allow payment through creation of liability for an overpayment, whereas decision # 85625 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 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 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 amending decisions. Finally, decision # 91808 itself cites ORS 657.267 as law that authorizes the Department to issue the administrative decision.⁵ Decision # 91808's invocation of the statute suggests that decision # 91808 the amendment made pursuant to ORS 657.267. Thus, decision # 91808 amended the original decisions to allow payments of benefits for the weeks at issue in this case.

Decision # 91808 was not made within one year of June 7, 2021. Instead, it was issued on May 30, 2023, nearly two years later. Further, the record does not show that the Department alleged that claimant made a willful misrepresentation or committed fraud. Therefore, claimant's case 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

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⁵ 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.

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-231537 is set aside, as outlined above.

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

DATE of Service: September 27, 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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www.Oregon.gov/Employ/eab

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.