

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0968

Modified
No Overpayment or Penalties

PROCEDURAL HISTORY: On July 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$1,944 overpayment of benefits that claimant was required to repay, a \$388.80 monetary penalty, and a 12-week penalty disqualification from future benefits (decision # 195225). Claimant filed a timely request for hearing. On August 3, 2023, ALJ Adamson conducted a hearing, and on August 11, 2023, issued Order No. 23-UI-232947, modifying decision # 195225 by concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and assessing a \$1,944 overpayment that claimant was required to repay, but not assessing a monetary penalty or penalty week disqualification. On August 25, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and is not subject to a monetary penalty or penalty week disqualification, is **adopted**. The rest of this decision addresses the assessment of overpayment.

FINDINGS OF FACT: (1) On January 8, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of \$648.

(2) Claimant claimed benefits for the weeks from January 5 through February 1, 2020 (weeks 02-20 through 05-20). Claimant received waiting week credit for the week of January 5 through 11, 2020 (week 02-20). Claimant was paid \$648 in regular UI benefits for each of the weeks from January 12 through February 1, 2020 (weeks 03-20 through 05-20), totaling \$1,944. Each of these payments was made on or before February 5, 2020.¹

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,

(3) On February 1, 2020, claimant's last employer paid claimant for the period of January 3 through February 1, 2020. When apportioned over this period, claimant received \$1,562.50 per week for weeks 02-20 through 05-20.

(4) On July 6, 2021, the Department issued decision # 195225, concluding that claimant was not eligible for benefits for weeks 03-20 through 05-20 because she received pay for each of those three weeks that exceeded her weekly benefit amount, and therefore assessed an overpayment of \$1,944 for weeks 03-20 through 05-20.² Decision # 195225 also alleged that claimant willfully made a misrepresentation and failed to report a material fact to obtain those benefits, pursuant to ORS 657.215.

(5) At hearing, the Department's representative testified, "I do not think that there should be willful misrepresentation in this case." Audio Record at 12:04. After explaining why she concluded that decision # 195225 should not have alleged fraud, the representative further testified, "But it was too late to issue an amended decision prior to the hearing." Audio Record at 14:38.

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.

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 \$648 x 3 weeks = \$1,944. The Department likely also determined that claimant was not eligible for benefits for week 02-20 for these reasons and was therefore not entitled to waiting week credit that week. However, decision # 195225 failed to make that assertion or allege that claimant was also overpaid for week 06-20, which would have then served as the waiting week. Accordingly, only weeks 03-20 through 05-20 are the weeks at issue.

(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.)

The order under review concluded that claimant was overpaid benefits for the weeks at issue that she must repay. Order No. 23-UI-232947 at 4. However, the record does not demonstrate that the Department had authority to amend its original decisions to allow payment with a decision assessing an overpayment for those weeks.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each of these claims on or before February 5, 2020. Because the decisions to allow payment did not require notice under ORS 657.267, the Department could only amend the decisions to allow payment within one year of the decisions, in the absence of “alleged willful misrepresentation or fraud.” ORS 657.267(4). Decision # 195225 amended the original decisions to allow payment for weeks 03-20 through 05-20 because it concluded that claimant was overpaid benefits for those weeks after the benefits were originally paid. Decision # 195225 was issued on July 6, 2021, more than one year after the last decision allowing payment was issued in February 2020. Accordingly, the Department was without authority to make such an amendment unless it is a case of “alleged willful misrepresentation or fraud.”

Decision # 195225 alleged that claimant “willfully made a misrepresentation and failed to report a material fact to obtain benefits” pursuant to ORS 657.215.³ However, the Department’s representative testified at hearing that she did not believe that claimant made a willful misrepresentation and suggested that the Department should have issued an amended administrative decision striking the allegation of willful misrepresentation prior to the hearing. Through this testimony, the Department effectively withdrew its allegation of willful misrepresentation or fraud. Order No. 23-UI-232947 also concluded after reviewing the evidence that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and that portion of the order under review has been adopted in this decision. Accordingly, the Department has not established that this is a case of “alleged willful misrepresentation or fraud,” and the one-year limitation on amending decisions under ORS 657.267(4) therefore applies.

³ ORS 657.215 provides that an individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

For these reasons, the Department lacked authority to amend the original decisions allowing the payment of benefits for the weeks at issue with a decision assessing an overpayment for those weeks that claimant must repay.

DECISION: Order No. 23-UI-232947 is modified, as outlined above.

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

DATE of Service: October 10, 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 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.

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