

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1004

Reversed & Remanded

PROCEDURAL HISTORY: On April 1, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$3,016 in regular unemployment insurance (regular UI) benefits to which he was not entitled and must repay (decision # 162521). Claimant filed a timely request for hearing. On May 31, 2023, ALJ Frank conducted a hearing, and on June 8, 2023 issued Order No. 23-UI-227350, affirming decision # 162521. On June 14, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACTS: (1) On March 23, 2020, claimant filed an initial claim for regular UI benefits. The Department determined that claimant had a valid claim for benefits with a weekly benefit amount of \$448.

(2) Claimant claimed benefits for the weeks from October 4 through November 28, 2020 (weeks 41-20 through 47-20). These are the weeks at issue. Claimant reported earnings for some of the weeks at issue, which reduced the amount of benefits the Department paid him for some weeks. Claimant received \$408 for week 41-20, \$408 for week 42-20, \$448 for week 43-20, \$448 for week 44-20, \$448 for week 45-20, \$428 for week 46-20, and \$428 for week 47-20. Claimant received a total of \$3,016 for the weeks at issue.

(3) On October 22, 2021, the Department issued decision # 73659 concluding that claimant quit work without good cause and was disqualified from receiving benefits effective October 4, 2020. On November 12, 2021, decision # 73659 became final without claimant having filed a request for hearing.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, 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 April 1, 2022, the Department issued decision # 162521, based in part on decision # 73659, concluding that claimant received \$3,016 in benefits for the weeks at issue to which he was not entitled and must repay.

(5) On April 20, 2022, claimant filed a late request for hearing on decision # 73659. On May 10, 2023, OAH served notice of hearing on decision # 73659 scheduled for May 30, 2023. On May 30, 2023, claimant failed to appear at the hearing, and on May 31, 2023 ALJ Frank issued Order No. 23-UI-226490, dismissing claimant's late request for hearing for failure to appear. On June 6, 2023, claimant filed a request to reopen the May 30, 2023 hearing on decision # 73659.²

CONCLUSIONS AND REASONS: Order No. 23-UI-227350 is set aside, and this matter remanded for further proceedings consistent with this order.

ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

The order under review's basis for concluding that claimant was overpaid benefits for the weeks at issue was that claimant was not entitled to those benefits because he was disqualified from receiving benefits effective October 4, 2020. Order No. 23-UI-227350 at 2-3. The source of claimant's October 4, 2020 disqualification was decision # 73659. Department records show that claimant filed a request to reopen the May 30, 2023 hearing on decision # 73659, and that that issue, and potentially claimant's late request for hearing on decision # 73659 and the merits of decision # 73659, are to be heard at a time not yet scheduled.

Thus, whether claimant quit work without good cause and was disqualified from receiving benefits effective October 4, 2020 remains unsettled. If decision # 73659 is reversed, the basis for concluding that claimant was overpaid for the weeks at issue would be eliminated. Accordingly, it is warranted to reverse Order No. 23-UI-227350 and remand this matter to OAH pending the outcome of claimant's request to reopen the May 30, 2023 hearing on decision # 73659.

On remand, the ALJ also should consider the application of ORS 657.267(4) to the overpayment in this case. ORS 657.267(4) prohibits the Department from amending its decisions to allow payment that do not require notice more than a year after those decisions were made, except in cases of alleged willful misrepresentation or fraud. Here, the weeks at issue are from October 4 through November 28, 2020, and the Department made its original decision to allow payment for the first week at issue on October 12, 2020. Exhibit 1 at 1. Decisions # 73659 and 162521 were issued more than a year after that, on October 22, 2021 and April 1, 2022, respectively.

² 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.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was overpaid benefits, Order No. 23-UI-227350 is reversed, and this matter is remanded.

DECISION: Order No. 23-UI-227350 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 20, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-227350 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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.

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