

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1049-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-1049 Adhered to on Reconsideration

PROCEDURAL HISTORY: On January 27, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing an overpayment of \$7,995 in Pandemic Unemployment Assistance (PUA) benefits and \$8,100 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$4,828.50 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On August 16, 2023, ALJ Nyberg conducted a hearing, and on August 28, 2023, issued Order No. 23-UI-234451, modifying the January 27, 2022 administrative decision by concluding that claimant was overpaid \$4,100 in PUA benefits and \$6,000 in FPUC benefits that he was required to repay to the Department, and was liable for a \$3,030 monetary penalty, and a 52-week penalty disqualification from future benefits. On September 18, 2023, the Department filed an application for review with the Employment Appeals Board (EAB). On September 18, 2023, the deadline to file an application for review of Order No. 23-UI-234451 passed. On October 4, 2023, claimant filed a late application for review of Order No. 23-UI-234451 with EAB.

On November 2, 2023, EAB issued EAB Decision 2023-EAB-1049, modifying Order No. 23-UI-234451 by concluding that claimant was overpaid \$3,690 in PUA and \$5,400 in FPUC benefits that he was required to repay, and was liable for a \$2,727 monetary penalty, and a 36-week penalty disqualification from future benefits. On November 16, 2023, claimant filed a timely request for reconsideration of EAB Decision 2023-EAB-1049 with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. EAB Decision 2023-EAB-1049 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment

Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed his request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed. However, EAB Decision 2023-EAB-1049 is adhered to on reconsideration.

In claimant’s reconsideration request, claimant stated as follows:

I . . . formally appeal the conclusion of this legal body—2023.EAB 1049[.] I declare that my claims were based on information instructed by staff persons employed by the state of Oregon’s Employment office.

Under oath, I established that an officer within the Employment Department, told me to fill out the claim for unemployment that would support dates in the months – Jan – September of 2020.

California State informed me after months of attempted calls, that Oregon was the locality/state for filing unemployment benefits.

After months, I was able to communicate with a staff member from Oregon State Unemployment. On these dates of contact, the employees informed me that the claim benefits would cover dates from Jan 2020.

During the legal proceedings, I informed the presiding magistrate that an Oregon State employee told me that the benefits would cover the claims starting in January/February of 2020.

I told the presiding official that phone records which are/were recorded would glean the veracity of my position.

I was told to claim benefits from Oregon—the last state I worked; which would cover the delays caused by the pandemic.

In sum, I made no, knowing false claims . . . I was following the instruction from state appointed staff.

Reconsideration Request at 1-2.

The assertions made in claimant’s reconsideration request reflect testimony claimant offered at hearing. *See* Transcript at 13-14, 15-16, 19, 26. EAB reviewed claimant’s testimony and considered it alongside the Department’s evidence during its review of the entire record in this case and in reaching EAB Decision 2023-EAB-1049.

Claimant's reconsideration request does not show that modifying EAB Decision 2023-EAB-1049 is warranted to correct any error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice. Accordingly, EAB Decision 2023-EAB-1049 is adhered to on reconsideration.

DECISION: Claimant's request for reconsideration is allowed. EAB Decision 2023-EAB-1049 is adhered to on reconsideration.

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

DATE of Service: December 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.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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