

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1059

Reversed
No Overpayment Assessed

PROCEDURAL HISTORY: On August 30, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$820 in Pandemic Unemployment Assistance (PUA) benefits and \$1,200 in Federal Pandemic Unemployment Assistance (FPUC) benefits that claimant was required to repay to the Department (decision # 103503). Claimant filed a timely request for hearing. On August 31, 2023, ALJ Chiller conducted a hearing, and on September 8, 2023, issued Order No. 23-UI-235473, affirming decision # 103503. On September 20, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the November 9, 2021, Notice of Determination for PUA, which 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 December 22, 2020, claimant filed an initial application for PUA benefits. The Department determined that the claim was monetarily valid with a weekly benefit amount of \$205.

(2) Claimant claimed benefits for the weeks including December 27, 2020, through January 23, 2021 (weeks 53-20 through 03-21). These are the weeks at issue. Claimant was paid \$205 in PUA benefits

and \$300 in FPUC benefits for each of these four weeks, totaling \$820 in PUA benefits and \$1,200 in FPUC benefits. Each of these payments was made on or before January 25, 2021.¹

(3) On November 9, 2021, the Department issued a Notice of Determination for PUA concluding that claimant was ineligible for PUA benefits effective February 21, 2021, because she was eligible for benefits under another unemployment insurance program. EAB Exhibit 1 at 1. On November 29, 2021, the November 9, 2021, PUA determination became final without claimant having filed a request for hearing. On September 19, 2022, claimant filed a late request for hearing on the November 9, 2021, PUA determination. On January 10, 2023, the Office of Administrative Hearings (OAH) issued Order No. 23-UI-212146, dismissing claimant's request for hearing as late. On January 30, 2023, Order No. 23-UI-212146 became final without claimant having filed an application for review with EAB.²

(4) On August 30, 2022, the Department issued decision # 103503, concluding that claimant was ineligible to receive PUA or FPUC benefits for the weeks at issue based on the November 9, 2021, PUA determination.³ It therefore assessed an overpayment for those weeks that claimant was required to repay.

CONCLUSIONS AND REASONS: The Department was not authorized to amend the original decisions allowing PUA and FPUC benefits for weeks 53-20 through 03-21 or to assess an overpayment for those weeks, and claimant is not liable to repay those benefits.

Lack of Authority to Amend Allowing Decisions for Weeks 53-20 through 03-21. 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*

¹ EAB has taken notice of 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 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 facts will remain in the record.

³ Decision # 103503 asserted that the November 9, 2021 PUA determination concluded that claimant was ineligible for PUA benefits because she "failed to provide information required by the Employment Department." Decision # 103503 at 1. At hearing, the Department's representative offered similar testimony. Audio Record at 10:15. However, the November 9, 2021 PUA determination stated that claimant was not entitled to benefits "because you are eligible for a regular unemployment claim, extension, or extended benefits in Oregon or another state." EAB Exhibit 1 at 1. This discrepancy is not explained in the record. Accordingly, the findings of fact have been based on the text of the November 9, 2021 PUA decision as it appears in EAB Exhibit 1.

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.

(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.)

Order No. 23-UI-235473 concluded that claimant was overpaid a total of \$820 in PUA benefits and \$1,200 in FPUC benefits for the weeks of December 27, 2020, through January 23, 2021 (weeks 53-20 through 03-21). Order No. 23-UI-235473 at 3. The record does not demonstrate that the Department had authority to amend its original decisions to allow payment to a decision denying claimant benefits, and therefore 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 PUA benefits for the weeks at issue by paying each of these claims on or before January 25, 2021. Because a decision to allow benefits does not require notice to the claimant pursuant to ORS 657.267(1), the Department may only amend decisions allowing benefits (*i.e.*, by denying benefits) within one year of the decision to allow, in the absence of "alleged willful misrepresentation or fraud." ORS 657.267(4).

Decision # 103503 did not allege that claimant was denied benefits, or was overpaid those benefits, as a result of willful misrepresentation or fraud. Instead, it asserted that claimant was ineligible for PUA benefits for the weeks at issue because she failed to provide requested information to the Department, as determined by the November 9, 2021, PUA determination. This reasoning was inconsistent with the text of the November 9, 2021, PUA determination, which described the reason for PUA ineligibility as other program eligibility, rather than a failure to provide information. The record does not show, or even suggest, that an overpayment based on either of these circumstances was caused by claimant making a willful misrepresentation. The Department did not otherwise assert that claimant was ineligible for

benefits and therefore overpaid as a result of willful misrepresentation or fraud. The one-year limitation on amendments found in ORS 657.267(4) is therefore applicable.

The Department issued decision # 103503 on August 30, 2022, assessing an overpayment of \$820 in PUA benefits and \$1,200 in FPUC benefits. The overpayment assessed by decision # 103503 was premised on a conclusion also made in decision # 103503 that claimant was ineligible for PUA and FPUC benefits for the weeks at issue as determined by the November 9, 2021, PUA determination. However, the November 9, 2021, PUA determination only concluded that claimant was ineligible for PUA benefits effective February 21, 2021, and it therefore did not apply to the weeks at issue, which all occurred prior to February 21, 2021. Accordingly, decision # 103503 was the first administrative decision issued purporting to deny claimant benefits for the weeks at issue, thereby amending the initial decisions to allow benefits. As decision # 103503 amended the decisions allowing PUA benefits for weeks 53-20 through 03-21 by denying PUA benefits for those weeks, it was subject to the one-year limitation set forth in ORS 657.267(4). Because decision # 103503 was not issued within one year of January 25, 2021, the Department was not authorized to assess an overpayment based on receipt of those benefits.

For these reasons, the Department lacked authority to amend the original decisions which allowed benefits to decisions denying claimant PUA benefits for weeks 53-20 through 03-21 and assess an overpayment of benefits for those weeks. Accordingly, claimant is not assessed an overpayment of benefits.

DECISION: Order No. 23-UI-235473 is set aside, as outlined above.

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

DATE of Service: November 1, 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.surveymzmo.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 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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