

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1076

Reversed
Overpayment Waiver Denied

PROCEDURAL HISTORY: On May 1, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's April 13, 2023, request to waive recovery of overpayments of \$15,100 of Pandemic Unemployment Assistance (PUA) benefits and a total of \$19,500 of Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # 152050). Claimant filed a timely request for hearing. On August 30, 2023, ALJ Roberts conducted a hearing, and on September 7, 2023 issued Order No. 23-UI-235295, reversing decision # 152050 by concluding that claimant's request to waive recovery of the overpayments should be granted. On September 27, 2023, the Department filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's 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). Neither claimant nor the Department offered the additional information into evidence, however EAB determined the evidence is necessary to complete the record pursuant to OAR 471-041-0090(1)(a). The additional evidence consists of Orders No. 23-UI-235290 and 23-UI-237597, and they have been marked as EAB Exhibits 1 and 2, respectively, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) On February 3, 2023, the Department issued an administrative decision concluding, in relevant part, that claimant willfully made a misrepresentation and failed to report a material fact regarding a work separation to obtain benefits, and assessing an overpayment of \$6,840 of

regular unemployment insurance (regular UI) benefits and \$10,200 of FPUC benefits corresponding to the regular UI benefits that claimant was required to repay to the Department. Claimant filed a timely request for hearing on the February 3, 2023 administrative decision.

(2) On February 10, 2023, the Department issued an administrative decision concluding, in relevant part, that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits regarding eligibility for PUA benefits in relation to a work separation, and assessing an overpayment of \$15,100 of PUA benefits and \$9,300 of FPUC benefits corresponding to the PUA benefits that claimant was required to repay to the Department. Claimant filed a timely request for hearing on the February 10, 2023 administrative decision.

(3) On April 13, 2023, claimant filed a request for waiver of recovery of federal benefit overpayments with the Department. He requested waiver of the overpayments of \$15,100 of PUA benefits, \$9,300 of FPUC benefits corresponding to the PUA benefits, and \$10,200 of FPUC benefits corresponding to the regular UI benefits. These are the overpayments at issue for purposes of the waiver request.

(4) On September 7, 2023, the Office of Administrative Hearings (OAH) issued Order No. 23-UI-235290, modifying the February 10, 2023 administrative decision by concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, but that claimant was overpaid \$15,100 of PUA benefits and \$9,300 of FPUC benefits that claimant was required to repay to the Department. Order No. 23-UI-235290 became final on September 27, 2023 without an application for review having been filed with EAB.¹

(5) On October 4, 2023, OAH issued Order No. 23-UI-237597, affirming the February 3, 2023 administrative decision by concluding, in relevant part, that claimant willfully made a material misrepresentation to obtain benefits and that claimant was overpaid \$6,840 of regular UI benefits and \$10,200 of FPUC benefits that claimant was required to repay to the Department. Order No. 23-UI-237597 became final on October 24, 2023 without an application for review having been filed with EAB.²

CONCLUSIONS AND REASONS: Claimant's request to waive recovery of the overpayments of \$15,100 of PUA benefits and \$19,500 of FPUC benefits is denied.

Waiver of PUA and FPUC overpayments are governed by the provisions of Section 2104(f)(2)(A)-(B) of the CARES Act, 15 U.S.C. § 9023(f), which requires, for waiver to be granted, that the overpayment of PUA or FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience.

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 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.

Federal guidance provides that, in general, “an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility.” Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022). However, “a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state . . . or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]” UIPL 20-21 Change 1, at 10.

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. ORS 657.310(1).

The order under review concluded that the overpayments at issue in the waiver request “were not due to claimant fault,” and were therefore eligible to be waived. Order No. 23-UI-235295 at 5. The record does not support this conclusion.

The February 3, 2023 administrative decision concluded that claimant was overpaid benefits, including \$10,200 of FPUC benefits, because he willfully made a material misrepresentation regarding a work separation. That administrative decision had not been disturbed as of the time the order under review was issued, and was ultimately affirmed by Order No. 23-UI-237597. Order No. 23-UI-237597 has since become final. In considering claimant’s request for waiver as to the \$10,200 overpayment of FPUC benefits, the issue of whether claimant was at fault in causing that overpayment had therefore already been determined. Accordingly, claimant cannot be deemed to be without fault for that overpayment.

Similarly, the February 10, 2023 administrative decision concluded that claimant was overpaid \$15,100 of PUA benefits and \$9,300 of associated FPUC benefits because he willfully made a material misrepresentation regarding eligibility for PUA benefits in relation to the work separation. A hearing on the February 10, 2023 administrative decision was conducted the same day as the hearing under review. EAB Exhibit 1 at 2. Order No. 23-UI-235290, issued the same day as the order under review, modified the February 10, 2023 administrative decision by concluding that claimant was overpaid \$15,100 of PUA benefits and \$9,300 of associated FPUC benefits, but that he did not willfully make a material misrepresentation with regard to the work separation at issue in determining his PUA eligibility. However, a conclusion that claimant did not make a willful misrepresentation does not necessarily equate to a conclusion that claimant was without fault in causing an overpayment. Other findings contained in Order No. 23-UI-235290 showed that that order concluded claimant was not without fault in causing the overpayment.

Order No. 23-UI-235290 concluded that the overpayments of \$15,100 of PUA benefits and \$9,300 of FPUC benefits were caused by claimant reporting that he had been laid off from work, then the Department later determining that he had instead voluntarily quit work without good cause. EAB Exhibit 1 at 7. Order No. 23-UI-235290 reasoned that claimant “believed that he had been laid off” when he reported that information, and therefore concluded that “the Department has not established

that claimant knowingly made a misrepresentation” in reporting the separation as a layoff. EAB Exhibit 1 at 7. The findings and conclusions of Order No. 23-UI-235290 therefore established that the overpayment was caused by claimant providing incorrect information regarding the separation. Order No. 23-UI-235290 contained a finding of fact with regard to the separation that claimant “asked to be taken off the payroll,” rather than continue to accept the employer’s payment of wages despite his not having to perform work during a pandemic-related closure of the business, because the employer’s continued payment of wages was “rendering him ineligible for unemployment benefits.” EAB Exhibit 1 at 4. Despite Order No. 23-UI-235290 concluding that claimant believed these circumstances constituted a layoff rather than a voluntary leaving, the order did not conclude that any information or instructions provided by the Department, or other obstacles to understanding the difference between being laid off and voluntarily quitting, factored into this erroneous belief. Accordingly, Order No. 23-UI-235290 concluded that claimant caused the overpayment by providing incorrect information to the Department, and that he did not do so based on misinformation from the Department “or other similar difficulties” contemplated by federal guidance regarding determining claimant fault.

Further, the February 10, 2023 administrative decision concluded that claimant was not without fault for the overpayment, in that it cited ORS 657.310 as authority for its issuance and concluded that claimant must repay the benefits pursuant to that statute, as opposed to concluding that claimant was only liable to repay the overpayments through deductions from future benefits pursuant to ORS 657.315.³ Order No. 23-UI-235290 acknowledged that one of the issues to be decided at the hearing on the February 10, 2023 administrative decision was whether ORS 657.310 or 657.315 was applicable to the terms of repayment. EAB Exhibit 1 at 2. Order No. 23-UI-235290 did not state that it modified the February 10, 2023 administrative decision’s conclusion that ORS 657.310 was applicable, and concluded that the overpaid benefits “must be repaid to the Department[.]” Order No. 23-UI-235290 at 7. Accordingly, the February 10, 2023 administrative decision’s conclusion that claimant was not without fault for the overpayment, consistent with ORS 657.310(1), was not disturbed by Order No. 23-UI-235290. Leaving this portion of the administrative decision undisturbed was consistent with other conclusions in Order No. 23-UI-235290 that claimant caused the overpayment by providing incorrect information.

Therefore, in addition to claimant not being deemed to be without fault for the overpayment of \$10,200 in FPUC benefits as explained earlier, claimant also cannot be deemed to be without fault for the overpayments of \$15,100 of PUA benefits and \$9,300 of FPUC benefits assessed by the February 10, 2023, administrative decision, as modified by Order No. 23-UI-235290.

Because claimant was not without fault in causing each of the overpayments at issue, 15 U.S.C. § 9023(f) prohibits waiver of the overpayments. Therefore, claimant’s request to waive recovery of the overpayment of \$15,100 of PUA benefits and \$19,500 of FPUC benefits is denied.

³ ORS 657.315(1)(a) provides: “If the Director of the Employment Department decides that an individual has been paid benefits to which the individual is not entitled because of an error not due to the individual providing a false statement or misrepresentation of a material fact or not disclosing a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, the individual is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter or the equivalent law of another state for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.”

DECISION: Order No. 23-UI-235295 is set aside, as outlined above.

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

DATE of Service: November 8, 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 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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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.