

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1076-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-1076 Adhered to on Reconsideration

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). On November 8, 2023, EAB issued EAB Decision 2023-EAB-1076, reversing Order No. 23-UI-235295 by denying claimant's waiver request. On November 28, 2023, claimant filed a request for reconsideration 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-1076 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's request for reconsideration included a statement that a copy of it was provided to the other party, and it was filed within 20 days of the mailing of EAB Decision 2023-EAB-1076. It therefore meets the threshold requirements of OAR 471-041-0145(2), and claimant's request for reconsideration is allowed.

Claimant requested reconsideration to correct alleged errors of material fact or law. Claimant contended that EAB Decision 2023-EAB-1076 erred in concluding that claimant's provision of incorrect information to the Department regarding a work separation was not "due to conflicting, changing, or confusing information or instructions from the state. . . or other difficulties. . ." as contemplated by Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022). Claimant's Request for Reconsideration at 1. To support this contention, claimant cited an August 25, 2020, letter from the Department to claimant informing him that he was monetarily eligible to file claims for Pandemic Emergency Unemployment Compensation (PEUC) benefits because he had exhausted the regular unemployment insurance benefits available on his claim. Claimant's Request for Reconsideration at 5. Claimant's first week of monetary eligibility for the PEUC benefits mentioned in the letter, the week of August 16, 2020, through August 22, 2020 (week 34-20),¹ was also the week in which the Department issued an administrative decision disqualifying claimant from benefits because he had voluntarily quit work without good cause. EAB Exhibit 1 at 3.

Claimant suggests that the fact the PEUC monetary eligibility letter and the administrative decision concluding he had quit work without good cause were sent to him at nearly the same time in August 2020, the letter and decision prompted him to file a claim for PUA benefits on December 11, 2020. Claimant's Request for Reconsideration at 2. However, even if claimant found these letters, or their issuance in quick succession, to be contradictory or confusing, such confusion had no bearing on claimant incorrectly providing the separation information that caused claimant to be overpaid. It was not merely that claimant *filed* an initial PUA claim, despite being ineligible for PUA, that caused claimant to be overpaid, as claimant's PUA claim might have been denied at the outset if all the information claimant provided the Department on the initial application for PUA benefits had been correct. Rather, the overpayment was caused by claimant stating within his initial application for PUA benefits, "I was laid off in March due to lack of work for COVID . . . The company is no longer operating as far as I know." EAB Exhibit 1 at 3. The information in that statement was incorrect because claimant had not been laid off, but instead had voluntarily quit work by refusing to accept wage payments and maintain the employment relationship while his employer's business was temporarily closed. Therefore, even if confusion about the August 2020 PEUC monetary eligibility letter prompted claimant to file his December 2020 PUA claim, the record does not show that the letter provided "conflicting, changing, or confusing information or instructions" such that claimant was prompted to misreport the work separation as a layoff, rather than a voluntary leaving on his initial application for PUA benefits. Accordingly, claimant has not shown error in this regard.

Claimant's request for reconsideration also contended that EAB Decision 2023-EAB-1076 erred in failing to fully consider claimant's initial confusion regarding his employment status, citing evidence given at an overpayment hearing about his uncertainty over the employment relationship when the

¹ EAB has taken notice of this fact which is 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.

employer began paying him wages while the business was temporarily closed due to COVID-19 restrictions. Claimant's Request for Reconsideration at 1. The record suggests that any uncertainty over what the wage payments were or why they were made was resolved when claimant discussed the matter with his employer and "asked to be taken off the payroll," several months prior to filing his December 2020 initial PUA claim in which he stated he had been "laid off." EAB Exhibit 1 at 3. Moreover, even if confusion caused by the payments had persisted until December 2020, such confusion was not attributable to information or instructions *from the Department*, only the actions of the employer. Accordingly, any confusion in this regard was outside of the scope of UIPL 20-21 Change 1, and did not excuse claimant from being considered at fault for providing incorrect information regarding the separation.

For these reasons, claimant has not shown that EAB Decision 2023-EAB-1076 erred in concluding that claimant was not without fault in causing the overpayments and in denying claimant's request to waive recovery of them. Accordingly, EAB Decision 2023-EAB-1076 is adhered to on reconsideration.

DECISION: Claimant's request for reconsideration is allowed. EAB Decision 2023-EAB-1076 is adhered to on reconsideration.

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

DATE of Service: January 9, 2024

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 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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