

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1206

Orders No. 23-UI-239173 and 23-UI-239170 Reversed ~ Overpayment Not Assessed
Application for Review of Order No. 23-UI-239169 Dismissed ~ No Justiciable Controversy

PROCEDURAL HISTORY: On August 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$10,320 in regular unemployment insurance (regular UI), \$8,085 in Pandemic Emergency Unemployment Compensation (PEUC), and \$3,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which she was not entitled and must repay (decision # 131710). On August 31, 2022, the Department served notice of an administrative decision denying claimant's request to waive recovery of the PEUC and FPUC overpayments it had assessed on August 25, 2023 (decision # 130121). On September 2, 2022, the Department served notice of an administrative decision assessing the same overpayment as in decision # 131710, except that the PEUC and FPUC overpayments totaled \$8,385 and \$3,600 (decision # 113046). Claimant filed timely requests for hearing on all three administrative decisions. On October 12, 2023, ALJ Ramey conducted a hearing on decisions # 131710 and 113046, and on October 20, 2023 issued Orders No. 23-UI-239173 and 23-UI-239170, modifying decision # 131710 and affirming decision # 113046 by assessing an overpayment of \$10,320 in regular UI, \$8,385 in PEUC, and \$3,600 in FPUC benefits that claimant was liable to repay. Also on October 12, 2023, ALJ Ramey conducted a hearing on decision # 130121, and on October 20, 2023 issued Order No. 23-UI-239169, affirming that decision. On October 25, 2023, claimant filed applications for review of Orders No. 23-UI-239173, 23-UI-239170, and 23-UI-239169 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-239173, 23-UI-239170, and 23-UI-239169. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-1204, 2023-EAB-1205, and 2023-EAB-1206).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is decision # 70057, an administrative decision that disqualified claimant from benefits effective August 23, 2020, and which predicated the assessed overpayments. It 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 May 29, 2020, claimant filed an initial application for unemployment insurance benefits. The Department determined it to be a monetarily valid claim for regular UI benefits with a weekly benefit amount of \$645. After claimant exhausted regular UI benefits on the claim, claimant was paid PEUC benefits in the same weekly benefit amount.

(2) Claimant filed weekly claims for the weeks of August 23, 2020 through March 6, 2021 and May 9 through 22, 2021 (weeks 35-20 through 09-21, and 19-21 and 20-21). These are the weeks at issue. Claimant was paid \$645 in regular UI benefits for each of weeks 35-20 through 50-20, for a total of \$10,320 in regular UI benefits. Claimant was paid \$645 in PEUC benefits for each of weeks 51-20 through 08-21 and 19-21, \$345 for week 09-21, and \$300 for week 20-21, totaling \$8,385 in PEUC benefits. Claimant was also paid \$300 in FPUC benefits for each of weeks 53-20 through 09-21, and 19-21 and 20-21, totaling \$3,600. Each of these payments was made on or before May 24, 2021.¹

(3) On July 15, 2021, the Department issued decision # 70057, concluding that claimant quit work without good cause and was disqualified from receiving benefits effective August 23, 2020. Claimant filed a timely request for hearing, but failed to appear at the hearing, and the request was subsequently dismissed. Decision # 70057 has become final.

(4) On August 25, 2022, the Department issued decision # 131710, assessing an overpayment for the weeks at issue. Decision # 131710 alleged that the overpayment occurred because “claimant failed to disclose a material fact... that claimant voluntarily left work.” Decision # 131710 at 1. The total \$8,058 PEUC overpayment assessed was \$300 less than the sum of the individual PEUC overpayments listed in the schedule of adjustments. The total FPUC \$3,900 overpayment assessed was \$300 more than the sum of the individual FPUC overpayments listed in the schedule of adjustments.

(5) On August 27, 2022, claimant filed a request for waiver of recovery of the PEUC and FPUC overpayment balances.

(6) On August 31, 2022, the Department issued decision # 130121, denying claimant’s waiver request because they determined that she was at fault for the overpayment.

(7) On September 2, 2022, the Department issued decision # 113046, assessing the same overpayment as in decision # 131710, except that the total PEUC and FPUC overpayments, \$8,385 and \$3,600, respectively, were consistent with the schedule of adjustments.

CONCLUSIONS AND REASONS: The Department was not authorized to amend the original decisions allowing regular UI, PEUC, and FPUC benefits for the weeks at issue or assess an

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.

overpayment for those weeks, and claimant is not liable to repay the overpayments. Claimant's application for review of Order No. 23-UI-239169 is dismissed as moot.

Lack of Authority to Amend Allowing Decisions. ORS 657.267, with emphasis added, provides as follows:

(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 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.

ORS 657.176 provides, in relevant part:

* * *

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit

amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

* * *

(c) Voluntarily left work without good cause[.]

* * *

Orders No. 23-UI-239173 and 23-UI-239170 concluded that claimant was overpaid \$10,320 in regular UI benefits, \$8,385 in PEUC benefits, and \$3,600 in FPUC benefits that claimant was liable to repay. Orders No. 23-UI-239173 and 23-UI-239170 at 7. However, the record does not show that the Department had authority to amend its original decisions to allow payment for each of the weeks at issue to a decision concluding that payment should not have been allowed, 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 benefits for the weeks at issue by paying each of those claims on or before May 24, 2021. Because a decision to allow benefits does not require notice to claimant pursuant to ORS 657.267(1), the Department may only amend decisions allowing payment within one year of the decision to allow, "except in cases of alleged willful misrepresentation or fraud." ORS 657.267(4).

The Department issued decision # 70057 on July 15, 2021, disqualifying claimant from benefits effective August 23, 2020, as the result of a work separation. By law, such a disqualification ends when an individual has "performed service in employment . . . for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred[.]" ORS 657.176(2). It is appropriate to regard decisions # 131710 and 113046, rather than decision # 70057, as the amendment of the original decisions to allow benefits for the weeks at issue. Decision # 70057 did not amend the Department's original decisions to allow payment each week for the weeks at issue because it did not purport to assess whether claimant had requalified for benefits each week and, accordingly, whether each weekly claim was allowed or denied on that basis.

On August 25, 2022, the Department issued decision # 131710, concluding that claimant was not entitled to receive the benefits she received for the weeks at issue based on the disqualification imposed in decision # 70057. Decision # 131710 effectively constituted a decision to deny payment for those weekly claims based on the Department's implicit conclusion that claimant *remained* disqualified from receiving benefits during those weeks. Decision # 131710 therefore constituted an amendment to each original decision to allow payment of those weekly claims by now denying payment. However, because more than a year had elapsed since the decisions to allow payment for these weekly claims, the Department lacked authority to amend them pursuant to ORS 657.267(4), unless alleging willful misrepresentation or fraud. For the same reason, the Department lacked the authority to issue decision # 113046 on September 2, 2022, which it apparently issued for the purpose of correcting a computational error in decision # 131710, but which otherwise contained the same conclusions.

Further, the effect of decisions # 131710 and 113046 was to reverse the original decisions to allow payment through creation of liability for an overpayment, whereas decision # 70057 merely established the predicate for the resulting overpayment by concluding claimant was disqualified from receiving benefits for an indefinite period. Additionally, decisions # 131710 and 113046 actually cite ORS 657.267, whereas decision # 70057 cites to state law authorizing the disqualification from benefits based on a work separation. Decision # 131710 at 1; Decision # 113046 at 1; EAB Exhibit 1 at 2.

Moreover, ORS 657.267(4) excludes amendments in cases of alleged fraud from the one-year time limitation. This implies that overpayment decisions—whether they be fraud, claimant fault but non-fraud, or agency error—are what the statute contemplates as the amendment of the original decision to allow payment. Since the one enumerated (but excepted) type of case, an alleged case of fraud, takes the form of an overpayment decision, it follows that the one-year time limitation applies to claimant fault but non-fraud and agency error cases, and that ORS 657.267(4) contemplates the overpayment decisions that give rise to those kinds of cases as the amendment. Thus, decisions # 131710 and 113046 amended the original decisions to allow the payment of benefits for the weeks at issue. The earliest amendment, decision # 131710, was made on August 25, 2022, and therefore not within one year of May 24, 2021. Accordingly, the Department was without authority to issue decisions # 131710 and 113046, absent alleged willful misrepresentation or fraud.

The Department alleged in decisions # 131710 and 113046 that claimant was paid benefits to which she was not entitled because she failed to report a work separation in August 2020 to the Department, a fact material to her eligibility for benefits. However, those decisions did not allege that claimant *willfully* failed to report that material fact to obtain benefits, and that the overpayment was therefore the result of willful misrepresentation or fraud. Accordingly, the one-year limitation on amendments set forth in ORS 657.267(4) is applicable, and the Department lacked authority to assess an overpayment for the weeks at issue. Claimant therefore is not liable to repay the overpayments assessed in decisions # 131710 and 113046.

Waiver. Because Orders No. 23-UI-239173 and 23-UI-239170 are reversed and claimant is no longer liable for an overpayment of benefits, claimant’s August 27, 2022 request for waiver of recovery of that overpayment is moot. Claimant’s application for review of Order No. 23-UI-239169, which affirmed denial of that waiver, therefore presents no justiciable controversy. A ruling on the merits of the waiver denial would have no practical effect on claimant’s rights or obligations. Accordingly, the application for review of Order No. 23-UI-239169 is dismissed.

DECISION: Orders No. 23-UI-239173 and 23-UI-239170 are set aside, as outlined above. Claimant’s application for review of Order No. 23-UI-239169 is dismissed.

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

DATE of Service: December 14, 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.

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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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