

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1238

Order No. 23-UI-239633 Affirmed ~ Late Request for Hearing Dismissed
Order No. 23-UI-239677 Modified ~ Overpayment Assessed

PROCEDURAL HISTORY: On November 16, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective December 26, 2021 (decision # 82915). On December 6, 2022, decision # 82915 became final without claimant having filed a request for hearing. On March 16, 2023, the Department served notice of an administrative decision, based in part on decision # 82915, concluding that claimant had received benefits to which she was not entitled, and assessing an overpayment of \$5,759 in regular unemployment insurance (regular UI) benefits that claimant was required to pay to the Department (decision # 154937). On March 30, 2023, claimant filed a late request for hearing on decision # 82915 and a timely request for hearing on decision # 154937. On October 25, 2023, ALJ Micheletti conducted a hearing on decision # 82915, at which the employer did not appear, and also a hearing on decision # 154937. On October 26, 2023, ALJ Micheletti issued Order No. 23-UI-239633, denying claimant's late request for hearing on decision # 82915 and leaving that decision undisturbed; and Order No. 23-UI-239677, affirming decision # 154937 on the merits. On November 6, 2023, claimant filed applications for review of Orders No. 23-UI-239633 and 23-UI-239677 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-239633 and 23-UI-239677. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1238 and 2023-EAB-1239).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of benefit payment information obtained from the Department's claims system, which EAB has taken notice of under OAR 471-041-0090(1) (May 13, 2019), and which is necessary to complete the record. This evidence 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.

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090. With the exception of the information taken notice of herein, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Based on a *de novo* review of the entire consolidated record in this case, and pursuant to ORS 657.275(2), Order No. 23-UI-239633 is **adopted**. The remainder of this decision addresses Order No. 23-UI-239677, regarding claimant's overpayment of benefits.

FINDINGS OF FACT: (1) On September 3, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$443.

(2) Claimant subsequently claimed benefits for the weeks of December 26, 2021 through January 1, 2022 (week 52-21) and January 9, 2022 through April 2, 2022 (weeks 02-22 through 13-22).¹ The Department paid claimant her regular benefit amount of \$443 for each of the weeks at issue, totaling \$5,759 for those weeks. When claimant claimed benefits for the week which included December 30, 2021 (week 52-21), she did not report that she had separated from a job that week.²

(3) The Department paid claimant benefits for each of weeks 52-21 and 02-22 through 10-22 on or prior to March 14, 2022. EAB Exhibit 1 at 1. The Department paid claimant benefits for each of weeks 11-22 through 13-22 on or after March 21, 2022. EAB Exhibit 1 at 1.

(4) On November 16, 2022, the Department issued decision # 82915, concluding that claimant had voluntarily quit working for an employer without good cause on December 30, 2021 and therefore was disqualified from receiving benefits effective December 26, 2021. On December 6, 2022, decision # 82915 became final without claimant having filed a request for hearing.

(5) Claimant filed a late request for hearing on decision # 82915, which was subsequently dismissed.

(6) On March 16, 2023, the Department issued decision # 154937, concluding that claimant was not entitled to benefits for the weeks at issue because she had failed to report the separation from work at issue in decision # 82915, and because she had been disqualified from benefits on the basis of that separation.

¹ Claimant also claimed, and was paid, benefits for the week of January 2, 2022 through January 8, 2022 (week 01-22). However, an overpayment for that week was assessed in a separate administrative decision, not on appeal here, and is not addressed further in this decision.

² EAB has taken notice of these facts, which are 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.

CONCLUSIONS AND REASONS: Claimant was overpaid benefits for the weeks at issue. However, the Department was not authorized to amend the original decisions allowing benefits for the weeks at issue which were paid more than a year prior to the issuance of decision # 154937, and claimant is therefore only liable for benefits overpaid during weeks 11-22 through 13-22.

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. *Id.* In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

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 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.)

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[.]

* * *

Order No. 23-UI-239677 concluded that claimant was overpaid \$5,759 in benefits that she was required to repay to the Department. Order No. 23-UI-239677 at 3. While the record shows that claimant was overpaid benefits in this amount over the course of the weeks at issue, the Department was not authorized to amend the original decisions allowing benefits for the weeks at issue which were paid more than a year prior to the issuance of decision # 154937.

As a preliminary matter, while the record indicates that claimant objected to the conclusion that she voluntarily quit a job, which was the basis for the disqualification underlying the overpayment at issue in these matters, that conclusion must be adhered to. As discussed above, claimant did not timely appeal the voluntary quit decision, and good cause has not been found for filing the late request for hearing. Therefore, that decision has become final, and, as a matter of law, claimant voluntarily quit work without good cause, disqualifying her from benefits as addressed in decision # 82915.

The Department made its original decisions under ORS 657.267(1) to allow payment of claimant's weekly claims for benefits for weeks 52-21 and 02-22 through 10-22 by paying each of these claims on or before March 14, 2022. Pursuant to ORS 657.267(1), except in cases of alleged willful misrepresentation or fraud, the Department has one year to amend the decision to allow benefits.

On March 16, 2023, the Department issued decision # 154937, concluding that claimant was not entitled to the benefits she received for the weeks at issue. The record suggests that claimant was at fault for the overpayment because she did not report the work separation that occurred during week 52-21 when she claimed benefits for that week. However, the record does not show that the Department alleged that claimant *willfully* misrepresented herself or committed fraud. Therefore, claimant's case was not one of willful misrepresentation or fraud, and the Department was subject to the one-year limitation on amending the original decisions to allow benefits imposed by ORS 657.267(4). Accordingly, the Department lacked authority to amend the original decisions that allowed the payment of benefits and, in turn, to assess an overpayment of benefits, for weeks 52-21 and 02-22 through 10-22, as benefits for each of those weeks were paid more than one year prior to the issuance of decision # 154937.

Conversely, because the Department paid claimant benefits for weeks 11-22 through 13-22 less than one year prior to the issuance of decision # 154937, the Department had authority to assess an overpayment for each of those three weeks. As claimant was paid her weekly benefit amount of \$443 for each of those three weeks, claimant remains liable for an overpayment of \$1,329 that she is required to repay to the Department.

DECISION: Order No. 23-UI-239633 is affirmed. Order No. 23-UI-239677 is modified, as clarified herein.

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

DATE of Service: December 20, 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.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov. You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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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