

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1242

Reversed
Overpayment Not Assessed

PROCEDURAL HISTORY: On September 12, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$13,818 in combined Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 112832). Claimant filed a timely request for hearing. On October 19, 2023, ALJ Nyberg conducted a hearing, and on October 27, 2023, issued Order No. 23-UI-239791, affirming decision # 112832. On November 8, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On July 31, 2020, claimant filed an initial claim for PUA benefits. The Department determined that claimant's weekly PUA benefit amount was \$205.

(2) Claimant claimed PUA benefits for the weeks of October 4, 2020, through August 7, 2021 (weeks 41-20 through 31-21). These are the weeks at issue. The Department paid claimant \$205 in PUA benefits, totaling \$9,020, for each of the weeks at issue. For each of the weeks of December 27, 2020, through August 7, 2021 (weeks 53-20 through 31-21), the Department also paid claimant \$300 in FPUC benefits, totaling \$9,600. All of the PUA and FPUC benefits that claimant claimed for the weeks at issue were paid on or before August 30, 2021.

(3) On August 26, 2022, the Department determined that claimant qualified for regular unemployment insurance (regular UI) and Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks at issue. Thereafter, the Department determined that claimant was not eligible for PUA benefits for the weeks at issue. On September 12, 2022, the Department issued decision # 112832, concluding that claimant was not eligible for PUA benefits for the weeks at issue and assessing an overpayment for benefits it had previously paid for those weeks. The Department also determined that the overpayment was caused by agency error, and was not claimant's fault.

CONCLUSIONS AND REASONS: the Department was not authorized to amend the original decisions allowing benefits for the weeks at issue, and claimant is therefore not liable to repay any overpaid benefits.

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.)

The record shows that after the Department paid claimant PUA and FPUC benefits for the weeks at issue, it determined that claimant had actually been eligible for regular UI and PEUC benefits for those weeks. Because eligibility for PUA requires, among other factors, that the individual is not eligible for regular UI or other unemployment benefits,¹ the Department determined that claimant had not actually been eligible for PUA benefits for those weeks and, accordingly, assessed an overpayment. It is not clear from the record why the Department determined that claimant was also overpaid FPUC benefits during

¹ See generally 15 U.S.C. § 9021.

those weeks. Regardless of the amount of the overpayment at issue or the reasons for its assessment, however, the Department was not authorized to assess overpayments for any of the weeks at issue.

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 on or before August 30, 2021. 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. The Department amended these decisions to allow payment by way of decision # 112832, issued on September 12, 2022. The Department has not alleged willful misrepresentation or fraud, and in fact determined that the overpayment was due to agency error, rather than claimant's fault. As such, the Department was only authorized to amend the original decisions to pay benefits within one year of the date on which the decisions to pay were made. Because all of the benefits at issue here were made more than one year prior to the issuance of decision # 112832, the Department is barred from amending those decisions and assessing an overpayment for the benefits paid for those weeks, and claimant is not liable for an overpayment for the weeks at issue.

DECISION: Order No. 23-UI-239791 is set aside, as outlined above.

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

DATE of Service: December 21, 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 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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www.Oregon.gov/Employ/eab

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