

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1284

Order No. 23-UI-239997 Affirmed ~ Late Request for Hearing Dismissed
Order No. 23-UI-240041 Modified ~ Overpayment, No Penalties

PROCEDURAL HISTORY: On April 20, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective May 23, 2021 (decision # 100904). On May 10, 2022, decision # 100904 became final without claimant having filed a request for hearing. On October 13, 2022, the Department served notice of an administrative decision based in part on decision # 100904, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$18,904 in regular unemployment insurance (regular UI) and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, a \$2,835.60 monetary penalty, and a 52-week disqualification from future benefits (decision #193229). On November 1, 2022, claimant filed a late request for hearing on decision # 100904 and a timely request for hearing on decision # 193229.

On October 13, 2023, ALJ Nyberg conducted a hearing on decision # 193229, and on October 23, 2023, conducted a hearing on decision # 100904. On October 31, 2023, ALJ Nyberg issued Order No. 23-UI-239997 dismissing claimant's late request for hearing on decision # 100904 and leaving that decision undisturbed. Also on October 31, 2023, ALJ Nyberg issued Order No. 23-UI-240041, modifying decision # 193229 by concluding that claimant was overpaid \$14,404 in regular UI and \$4,500 in FPUC benefits that claimant was required to repay, but that claimant did not willfully make a false statement to obtain benefits and therefore was not liable for a monetary penalty or a disqualification from future benefits. On November 20, 2023, claimant filed applications for review of Orders No. 23-UI-239997 and 23-UI-240041 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-239997 and 23-UI-240041. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1285 and 2023-EAB-1284).

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-239997 is **adopted**. The portion of Order No. 23-UI-240041 concluding that claimant did not willfully make a false statement to obtain benefits also is **adopted**. The rest of this decision addresses claimant's overpayment of benefits.

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). 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.

FINDINGS OF FACT: (1) On May 30, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$554. On his initial claim, claimant reported that he had separated from employers Sunset Park 1991, LLC (DBA Ankeny Tap and Table)¹ and Core Mark International due to a lack of work.

(2) Claimant filed weekly claims for the weeks of May 23 through November 20, 2021 (weeks 21-21 through 46-21). These are the weeks at issue. For each of the weeks at issue, the Department paid claimant his weekly benefit amount in regular UI benefits, totaling \$14,404. Additionally, for each of the weeks from May 23 through September 4, 2021 (weeks 21-21 through 35-21), the Department paid claimant \$300 in FPUC benefits, totaling \$4,500.

(3) The Department paid claimant benefits for each of the weeks of May 23 through October 2, 2021 (weeks 21-21 through 39-21) on or before October 11, 2021. EAB Exhibit 1. The Department paid claimant benefits for each of the weeks of October 3 through November 20, 2021 (weeks 40-21 through 46-21) on or after October 18, 2021. EAB Exhibit 1.

(4) On April 20, 2022, the Department issued decision # 100904, concluding that claimant had quit working for employer Ankeny Tap and Table without good cause on May 25, 2021, disqualifying claimant from receiving benefits effective May 23, 2021. On May 10, 2022, decision # 100904 became final without claimant having filed a request for hearing. Claimant filed a late request for hearing on decision # 100904, which was subsequently dismissed.

(5) On October 13, 2022, the Department issued decision # 193229, concluding that claimant was not entitled to benefits for the weeks at issue, in part because he had failed to report the separation from

¹ EAB has taken notice of this fact, which is a generally cognizable fact. 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.

work at issue in decision # 100904, and had been disqualified from benefits on the basis of that separation.²

CONCLUSIONS AND REASONS: Claimant was overpaid benefits for the weeks at issue. However, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue which were paid more than a year prior to the issuance of decision # 193229, and claimant therefore is only liable to repay the benefits overpaid for weeks 40-21 through 46-21.

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.

² The record shows that decision # 193229 was also based, in part, on a separate administrative decision (# 130540), concluding that claimant had voluntarily quit working for employer Core Mark International without good cause. However, that administrative decision was reversed at hearing, such that it no longer forms a basis for claimant's overpayment of benefits. As such, it is not discussed further in this decision.

(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-240041 concluded that claimant was overpaid \$18,904 in state and federal benefits that he was required to repay the Department. Order No. 23-UI-240041 at 5. 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 payment of benefits for the weeks at issue which were paid more than a year prior to the issuance of decision # 193229.

As a preliminary matter, while the record suggests that claimant may have disagreed with decision # 100904's conclusion that he voluntarily quit working for Sunset Park 1991, LLC, which was partially 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 decision # 100904, and his late request for hearing was dismissed. Decision # 100904 therefore has become final and, as a matter of law, claimant quit work without good cause, disqualifying him from receiving benefits effective May 23, 2021.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for weeks 21-21 through 39-21 by paying each of these claims on or before October 11, 2021. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department has one year to amend the decision to allow benefits.

On October 13, 2022, the Department issued decision # 193229, concluding that claimant was not entitled to the benefits he received for the weeks at issue. The record suggests that claimant was at fault for the overpayment because reported the work separation from Ankeny Tap and Table as a lack of work when he filed his initial claim. However, while the Department *alleged* that claimant willfully misrepresented himself or committed fraud by misreporting the work separation, the order under review, as affirmed here, concluded that claimant did *not* willfully misrepresent himself or commit fraud in order to obtain benefits. Therefore, claimant's case was not one of willful misrepresentation or fraud, and the Department was subject to the one-year limitation on amending its original decisions to allow payment 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 21-21 through 39-21, as benefits for each of those weeks were paid more than one year prior to the issuance of decision # 193229.

Conversely, because the Department paid claimant benefits for weeks 40-21 through 46-21 less than one year prior to the issuance of decision # 193229, the Department had authority to assess an overpayment for each of those seven weeks. As claimant was paid his weekly benefit amount of \$554 in regular UI benefits for each of those three weeks, claimant remains liable for an overpayment of \$3,878 that he is required to repay to the Department.

DECISION: Order No. 23-UI-239997 is affirmed. Order No. 23-UI-240041 is modified, as outlined above.

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

DATE of Service: January 5, 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.

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 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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