

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1286**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$6,705 overpayment of regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department, a \$1,005.75 monetary penalty, and a 37-week penalty disqualification from future benefits (decision # 194641). Claimant filed a timely request for hearing. On November 3, 2023, ALJ Goodrich conducted a hearing, and on November 9, 2023 issued Order No. 23-UI-240820, modifying decision # 194641 by concluding that claimant was overpaid \$3,129 in regular UI benefits that he was liable to repay to the Department, but that he did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and was not subject to a monetary penalty or penalty disqualification weeks. On November 20, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits and was therefore not subject to a monetary penalty or penalty disqualification weeks is **adopted**. The rest of this decision addresses the assessment of an overpayment.

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, because claimant's argument constituted a request to reopen a January 5, 2023 hearing on decision # 141225, it will be forwarded to the Office of Administrative Hearings (OAH) for further proceedings in that matter.

**FINDINGS OF FACT:** (1) On June 9, 2022, claimant filed an initial claim for unemployment insurance benefits. The Department determined it to be a monetarily valid claim for regular UI benefits with a weekly benefit amount (WBA) of \$447.

(2) Claimant filed weekly claims for the weeks including June 19, 2022 through October 1, 2022 (weeks 25-22 through 39-22). These are the weeks at issue. Claimant was paid \$447 in regular UI benefits for each of these 15 weeks, totaling \$6,705.

(3) On August 31, 2022, Whelan Security of California paid claimant \$540, which they asserted was payment for 24 hours of work claimant performed on July 11, 2022 and July 12, 2022 as a security guard. Claimant believed he was never an employee of Whelan Security of California but accepted the payment.

(4) On November 10, 2022, the Department issued decision # 141225, concluding that claimant voluntarily quit working for Whelan Security of California without good cause and was therefore disqualified from receiving benefits effective June 12, 2022. Exhibit 1 at 5. Claimant requested a hearing on decision # 141225, which was scheduled for January 5, 2023. Claimant failed to appear at that hearing and OAH issued an order dismissing the request for hearing.

(5) On November 20, 2023, claimant filed a late request to reopen the January 5, 2023 hearing on decision # 141225.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-240820 is set aside and the matter remanded for further proceedings.

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. ORS 657.310(1).

The order under review concluded that claimant was overpaid \$447 in benefits for the week of July 10, 2022, through July 16, 2022 (week 28-22) because he earned remuneration in excess of his WBA that week and was therefore not unemployed and not entitled to benefits. Order No. 23-UI-240820 at 4. Further, the order under review concluded that claimant was overpaid \$2,682 in benefits for the weeks of August 21, 2022 through October 1, 2022 (weeks 34-22 through 39-22) based on the finality of decision # 141225, which disqualified claimant from benefits for those weeks. Order No. 23-UI-240820 at 4. The record as presently constituted does not support these conclusions, in part because claimant has requested reopening of the hearing on decision # 141225, and the outcome of claimant's appeal of that matter affects whether claimant was overpaid benefits for the weeks at issue.

Decision # 141225 disqualified claimant from receiving benefits effective June 12, 2022 based on a work separation involving Whelan Security of California. At hearing, claimant denied ever having worked for Whelan Security of California. Transcript at 27-28. Whelan Security of California and claimant offered differing accounts of why claimant was paid \$540 on August 31, 2022, respectively contending that it was the result of time spent by claimant on July 11, 2022 and July 12, 2022, either working or evaluating a potential job offer. Transcript at 19-20; 43. The issue of whether Whelan Security of California employed claimant is essential to a determination of whether a disqualifying work separation occurred, and whether claimant earned remuneration in excess of his weekly benefit amount.

The Department conceded that if claimant had been employed by Whelan Security of California and quit work without good cause, a disqualification for that reason should not have been effective until July 10, 2022 (week 28-22), based on the parties agreeing that the time expended by claimant for which he was paid \$540 occurred during that week. Transcript at 57. However, the order under review went further, concluding that a work separation “occurred effective August 21, 2022,” and that the June 12, 2022 disqualification effective date in decision # 141225 was assumed to be “a typographical error.” Order No. 23-UI-240820 at 2. The order under review therefore used the August 21, 2022 effective date to conclude that claimant was not overpaid benefits as the result of a work separation disqualification for the weeks of June 19, 2022 through August 20, 2022 (weeks 25-22 through 33-22), but that he was overpaid based on the disqualification for the weeks of August 21, 2022 through October 1, 2022 (weeks 34-22 through 39-22). Order No. 23-UI-240820 at 2, 4. In the absence of action by the Department to amend decision # 141225, claimant’s late request to reopen the hearing on decision # 141225 is the proper means by which to seek review of that decision, including as to the effective date of disqualification.

As decision # 141225 has not been modified or reversed on appeal, or reconsidered by the Department pursuant to ORS 657.290, a determination of whether claimant was overpaid for the weeks at issue is dependent on the outcome of claimant’s appeal of decision # 141225. Accordingly, Order No. 23-UI-240820 is reversed, and the matter remanded for further proceedings consistent with the outcome of claimant’s late request to reopen the hearing on decision # 141225.

**DECISION:** Order No. 23-UI-240820 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: January 3, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-240820 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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