

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1328

Order No. 23-UI-241964 Affirmed ~ Ineligible Weeks 07-21 through 08-21; Eligible Week 09-21
Order No. 23-UI-242009 Modified ~ No Overpayment

PROCEDURAL HISTORY: On April 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was unavailable for work from February 7 through March 6, 2021 (weeks 06-21 through 09-21) and was ineligible for benefits for those weeks (decision # 85410). On May 11, 2021, decision # 85410 became final without claimant having filed a request for hearing. On July 14, 2022, the Department served notice of an administrative decision based in part on decision # 85410, concluding that claimant received \$1,296 in Pandemic Emergency Unemployment Compensation (PEUC) and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which she was not entitled and must repay (decision # 123014). On August 2, 2022, claimant filed a late request for hearing on decision # 85410 and a timely request for hearing on decision # 123014.

On November 22, 2023, ALJ Adamson conducted a hearing, and on November 27, 2023 issued Order No. 23-UI-241964, allowing claimant's late request for hearing and modifying decision # 85410 by concluding that claimant was unavailable for work from February 14 through February 27, 2021 (weeks 07-21 through 08-21) and therefore ineligible for benefits for those weeks, but was available for work during the week of February 28 through March 6, 2021 (week 09-21) and was eligible for benefits for that week.¹ On November 28, 2023, ALJ Adamson issued Order No. 23-UI-242009, modifying decision # 123014 by concluding that claimant was overpaid \$648 in PEUC benefits² and \$300 in FPUC benefits that claimant must repay. On December 8, 2023, claimant filed applications for review of Orders No. 23-UI-241964 and 23-UI-242009 with the Employment Appeals Board (EAB).

¹ Order No. 23-UI-241964 concluded that claimant did not file a claim for benefits for week 06-21 and therefore did not further address her eligibility for benefits for that week. Order No. 23-UI-241964 at 5.

² Order No. 23-UI-242009 simply refers to these as "unemployment insurance" benefits, however the record shows that they were PEUC benefits, as stated in decision # 123014. Order No. 23-UI-242009 at 2.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-241964 and 23-UI-242009. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1328 and 2023-EAB-1327).

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-241964 is **adopted**. The rest of this decision addresses Order No. 23-UI-242009 regarding the overpayment of benefits.

FINDINGS OF FACT: (1) On July 18, 2019, claimant filed an initial claim for unemployment insurance benefits. The Department determined it was a monetarily valid claim for regular unemployment insurance (regular UI) benefits with a weekly benefit amount (WBA) of \$648. After exhausting regular UI benefits, claimant was paid PEUC benefits on the claim with the same WBA.

(2) Claimant filed weekly claims for benefits including for the weeks of February 21 through March 6, 2021 (weeks 08-21 through 09-21). For each of those weeks, claimant was paid \$648 in PEUC benefits and \$300 in FPUC benefits, on or before March 23, 2021.

(3) On April 21, 2021, the Department issued decision # 85410, concluding that claimant was ineligible for benefits for from February 21 through March 6, 2021 (weeks 08-21 through 09-21).

(4) On July 14, 2022, the Department issued decision # 123014, concluding that claimant was not entitled to benefits for weeks 08-21 and 09-21 and therefore was liable to repay \$1,296 in PEUC benefits and \$600 in FPUC benefits that she had been overpaid for those weeks.

(5) On November 27, 2023, Order No. 23-UI-241964 modified decision # 85410 by concluding that claimant was ineligible for benefits for week 08-21 but eligible for benefits for week 09-21.

CONCLUSIONS AND REASONS: Claimant was not overpaid benefits for week 09-21. Claimant was overpaid \$648 in PEUC benefits and \$300 in FPUC benefits for week 08-21. However, the Department was not authorized to amend the original decision allowing payment of benefits for week 08-21, and claimant is therefore not liable for the overpayment.

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.)

Order No. 23-UI-242009 concluded that claimant was not overpaid benefits for week 09-21 because the underlying administrative decision finding claimant ineligible for benefits was reversed on appeal as to that week. Order No. 23-UI-242009 at 3. The record supports this conclusion. However, Order No. 23-UI-242009 also concluded that claimant was liable for an overpayment of \$648 in PEUC benefits and \$300 in FPUC benefits for week 08-21. Order No. 23-UI-242009 at 3. While the record shows that claimant was overpaid those benefits for week 08-21, the Department was not authorized to amend the original decision allowing payment of benefits for that week more than a year later.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for week 08-21 by paying the weekly claim on March 23, 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. The Department issued decision # 85410 on April 21, 2021, concluding that claimant was ineligible for benefits for a period which included week 08-21. Based on decision # 85410, the Department issued decision # 123014 on July 14, 2022, concluding that claimant was not entitled to the benefits she received for week 08-21 because she was ineligible for benefits that week. It was therefore decision # 123014, and not decision # 85410, that amended the original decision to allow payment of benefits for week 08-21 to a decision concluding that claimant was not entitled to receive those benefits and that they had been overpaid.

Because decision # 123014 was issued more than one year after the original decision to allow benefits for week 08-21, the Department was not authorized to issue it pursuant to ORS 657.267(4) in the absence of alleged willful misrepresentation or fraud. The Department did not allege in decision # 123014 or at hearing that the overpayment was caused by willful misrepresentation or fraud. Therefore, the one-year limitation on amendments found in ORS 657.267(4) applies.

Accordingly, the Department lacked authority to amend the original decision allowing payment of benefits for week 08-21 with a decision assessing an overpayment that week, and claimant is not liable for that overpayment.

In sum, claimant is not liable for an overpayment of benefits for week 08-21 and was not overpaid benefits for week 09-21.

DECISION: Order No. 23-UI-241964 is affirmed. Order No. 23-UI-242009 is modified, as outlined above.

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

DATE of Service: January 19, 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.

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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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