

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1347

Order No. 23-UI-242527 Affirmed ~ Disqualification
Application for Review of Order No. 23-UI-242528 Dismissed ~ No Justiciable Controversy

PROCEDURAL HISTORY: On April 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for 503 Motoring (the employer) without good cause, disqualifying claimant from receiving benefits effective May 17, 2020 (decision # 162505). On May 18, 2022, decision # 162505 became final without claimant having requested a hearing. On July 14, 2022, the Department served notice of an administrative decision based on decision # 162505, concluding that claimant received \$10,935 in benefits to which he was not entitled and must repay (decision # 152157). On July 25, 2022, claimant filed a late request for hearing on decision # 162505 and a timely request for hearing on decision # 152157.

On November 21, 2023, ALJ Chiller conducted hearings regarding decisions # 162505 and 152157. On December 4, 2023, issued Order No. 23-UI-242527 allowing claimant's late request for hearing on decision # 162505 and affirming that decision. Also on December 4, 2023, ALJ Chiller issued Order No. 23-UI-242528, reversing decision # 152157. On December 18, 2023, claimant filed timely applications for review of Orders No. 23-UI-242527 and 23-UI-242528 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-242527 and 23-UI-242528. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1347 and 2023-EAB-1348).

WRITTEN ARGUMENT: EAB did not consider claimant's argument with respect to Order No. 23-UI-242527 because claimant did not include a statement declaring that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant considered claimant's written argument with respect to Order No. 2023-EAB-1348 to the extent it was based in information received into evidence at the hearing on decision # 152157. However, claimant's argument contained new information that is not material to whether claimant's application for review of Order No. 2023-EAB-1348 should be dismissed. EAB therefore did not consider claimant's new information when reaching this decision. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019).

EAB reviewed both hearing records. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-242527, which concluded that claimant quit working for the employer without good cause, is **adopted**. The rest of this decision addresses whether claimant's application for review of Order No. 23-UI-242528 should be dismissed.

FINDING OF FACT: Order No. 23-UI-242528 reversed decision # 152157 by concluding that claimant was not required to repay the \$10,935 in benefits he received from for the weeks from December 6, 2020 through March 20, 2021 (weeks 50-20 through 11-21) because the Department did not have the authority to amend its original decision to allow the payment of benefits, or assess an overpayment, for any of those weeks.

CONCLUSIONS AND REASONS: Claimant's application for review of Order No. 23-UI-242528 presents no justiciable controversy and is dismissed.

On December 18, 2023, claimant an application for review of Order No. 23-UI-242528 with EAB. However, Order No. 23-UI-242528 reversed decision # 152157 by concluding that claimant was **not** required to repay the \$10,935 in benefits he received for the weeks from December 6, 2020 through March 20, 2021 (weeks 50-20 through 11-21) because the Department did not have the authority to amend its original decision to allow the payment of benefits, or assess an overpayment, for any of those weeks. Claimant did not assign error to any portion of that order, did not request reversal of any portion of the order, and alleged no facts entitling claimant to further relief in this matter. Accordingly, there is no justiciable controversy before EAB based upon claimant's application for review. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because the case before EAB presents no justiciable controversy, the application for review of Order No. 23-UI-242528 is dismissed and Order No. 23-UI-242528 remains undisturbed.

DECISION: Order No. 23-UI-242527 is affirmed. Order No. 23-UI-242528 presents no justiciable controversy and is dismissed.

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

DATE of Service: January 4, 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

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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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