

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0134

Reversed & Remanded

PROCEDURAL HISTORY: On November 22, 2023, 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 \$1,722 overpayment that claimant must repay, a \$258.30 monetary penalty, and a 9-week penalty disqualification from future benefits (decision # 194157). Claimant filed a timely request for hearing. On January 10, 2024, ALJ Griffin conducted a hearing, and on January 11, 2024, issued Order No. 24-UI-245397, affirming decision # 194157. On January 31, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On November 21, 2023, the Department issued decision # 114732, concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective September 3, 2023. Decision # 114732 became final on December 11, 2023, without claimant having filed a request for hearing. On December 12, 2023, claimant filed a late request for hearing on decision # 114732.

(2) On November 22, 2023, the Department issued decision # 194157. In relevant part, decision # 194157 concluded that claimant was paid a total of \$1,722 in benefits for the weeks of September 24 through November 18, 2023 (weeks 39-23 through 46-23) to which she was not entitled and must repay because decision # 114732 disqualified her from receiving benefits for those weeks. Exhibit 1 at 2.

(3) On December 21, 2023, the Office of Administrative Hearings (OAH) issued Order No. 23-UI-243926, dismissing claimant's request for hearing on decision # 114732 as late. Claimant filed a timely application for review of Order No. 23-UI-243926 with EAB. On February 8, 2024, EAB issued EAB Decision 2024-EAB-0056, reversing Order No. 23-UI-243926 by allowing claimant's late request for

hearing and remanding the matter for a hearing on the merits of decision # 114732. As of the date of this decision, OAH has not yet held that hearing.¹

CONCLUSIONS AND REASONS: Order No. 24-UI-245397 is set aside and this matter remanded for further development of the record regarding the outcome of claimant's appeal of decision # 114732.

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.* An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. In addition, an individual who has been disqualified for benefits under ORS 657.215 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).

The order under review concluded that claimant was overpaid \$1,722 in benefits for weeks 39-23 through 46-23 because she was disqualified from receiving benefits those weeks by decision # 114732, which had not been disturbed on appeal. Order No. 24-UI-245397 at 5-6. The record no longer supports this conclusion because, as of the date of this decision, a hearing on the merits of decision # 114732 is currently pending. The disqualification imposed by decision # 114732 is likely determinative of whether claimant is entitled to the benefits she was paid for weeks 39-23 through 46-23. Therefore, it is appropriate to set aside the order under review and remand this matter to accompany claimant's pending appeal of decision # 114732 at OAH.

It should be noted that even if decision # 114732 is reversed on appeal and claimant is not disqualified from receiving benefits for weeks 39-23 through 46-23, and was therefore not overpaid, she may nonetheless be subject to a 4-week penalty disqualification from future benefits under ORS 657.215 for willfully making a misrepresentation or failing to report a material fact to obtain benefits regarding the work separation, if the record on remand supports such a conclusion. *See, e.g.*, EAB Decision 2022-EAB-1153 (January 25, 2023).

DECISION: Order No. 24-UI-245397 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 6, 2024

¹ EAB has taken notice of these facts regarding the procedural history of decision # 114732, which are contained in Employment Department records. 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 facts will remain in the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-245397 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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