

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0181

Modified
Request to Reopen Allowed
No Overpayment or Penalties Assessed

PROCEDURAL HISTORY: On February 16, 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 an overpayment of \$6,157 in combined state and federal benefits that claimant was required to repay to the Department, a \$923.55 monetary penalty, and a 38-week penalty disqualification from future benefits (decision # 193567). Claimant filed a timely request for hearing. On August 29, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 13, 2023. On September 13, 2023, claimant failed to appear at the hearing, and ALJ Wardlow issued Order No. 23-UI-235785, dismissing claimant's request for hearing due to her failure to appear and leaving decision # 193567 undisturbed. On September 27, 2023, claimant filed a timely request to reopen the hearing.

On January 26, 2024, ALJ Lucas conducted a hearing at which the employer failed to appear. On February 1, 2024, ALJ Lucas issued Order No. 24-UI-247142, allowing claimant's request to reopen the September 13, 2023 hearing, canceling Order No. 23-UI-235785, and modifying decision # 193567 by concluding that claimant was overpaid \$1,657 in regular unemployment insurance (regular UI) benefits and \$4,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that she was required to repay to the Department, but that claimant did not make a willful misrepresentation of fact to obtain benefits, and therefore was not liable for a monetary penalty or penalty disqualification weeks. On February 16, 2024, claimant filed an application for review of 24-UI-247142 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. EAB considered claimant's argument to the extent it was based on the record.

EAB considered the entire hearing record. EAB agrees with the portions of Order No. 24-UI-247142 allowing claimant's request to reopen the hearing and concluding that claimant was not liable for a monetary penalty or penalty disqualification. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-247142 is **adopted**. The remainder of this decision addresses claimant's liability for the overpayment of benefits for the weeks at issue.

FINDINGS OF FACT: (1) On July 26, 2019, claimant filed an initial claim for unemployment insurance benefits. That benefit year ended on July 18, 2020 (herein, this benefit year is referred to as "BYE 29-20").¹ Claimant's weekly benefit amount for BYE 29-20 was \$240. On July 19, 2020, claimant filed a new initial claim for benefits. That benefit year ended on July 17, 2021 (herein, this benefit year is referred to as "BYE 28-21").² Claimant's weekly benefit amount for BYE 28-21 was \$360.

(2) Claimant claimed benefits for the weeks of June 7, 2020, through July 18, 2020 (weeks 24-20 through 29-20) during BYE 29-20 and July 19, 2020 through August 1, 2020 (weeks 30-20 through 31-20) during BYE 28-21. The Department paid claimant her applicable weekly benefit amount in regular unemployment insurance (regular UI) benefits for each of the weeks at issue, reduced for most of those weeks due to reported earnings. Additionally, the Department paid claimant \$600 in FPUC benefits for each of weeks 24-20 through 30-20, and \$300 in Lost Wages Assistance (LWA) benefits for week 31-20. In sum, the Department paid claimant a total of \$1,657 in regular UI benefits, \$4,200 in FPUC benefits, and \$300 in LWA benefits during the weeks at issue. The Department paid claimant benefits for all of these weeks on or before August 3, 2020.³

(3) On June 11, 2020, claimant separated from employment with the employer. However, due to a misunderstanding on her part, claimant did not report the separation when she claimed benefits for that week.

(4) The Department later learned about claimant's separation from the employer and, on November 23, 2020, issued decision # 100525, concluding that claimant had voluntarily quit working for the employer without good cause and therefore was disqualified from receiving benefits effective June 7, 2020. After decision # 100525 became final, claimant filed a late request for hearing on that decision. On April 18, 2022, ALJ Kangas issued Order No. 22-UI-191544, dismissing claimant's late request for hearing on

¹ EAB has taken notice of these facts, 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 fact will remain in the record.

² EAB has taken notice of these facts, 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 fact will remain in the record.

³ EAB has taken notice of these facts, 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 fact will remain in the record.

decision # 100525. On May 9, 2022, Order No. 22-UI-191544 became final without claimant having filed an application for review with EAB.⁴

(5) On February 16, 2023, the Department issued decision # 193567, concluding, in relevant part, that claimant was not entitled to benefits for the weeks at issue and assessing an overpayment amount that included the benefits paid during those weeks.

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 because they were paid more than a year prior to the issuance of decision # 193567 on February 16, 2023, and claimant therefore is not liable to repay the overpaid benefits.

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.*

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 EAB has taken notice of these facts, 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 fact will remain in the record.

(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.)

The order under review concluded that claimant was overpaid state and federal benefits for the weeks at issue, which she was required to repay the Department. Order No. 24-UI-247142 at 17–18. While the record shows that claimant was overpaid benefits for the weeks at issue, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue because they were paid more than a year prior to the issuance of decision # 193567.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each of these claims on or before August 3, 2020. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department had one year to amend the decision to allow benefits.

On February 16, 2023, the Department issued decision # 193567, concluding that claimant was not entitled to the benefits she received for the weeks at issue. The record suggests that claimant was at fault for the overpayment because she failed to properly report her separation from work. However, the order under review, as affirmed here, concluded that claimant did not *willfully* misrepresent herself or commit fraud in order to obtain benefits. Therefore, claimant’s case is 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 the weeks at issue, as benefits for each of those weeks were paid more than one year prior to the issuance of decision # 193567. Claimant therefore is not liable to repay the overpaid regular UI, FPUC, or LWA benefits for the weeks at issue.⁵

DECISION: Order No. 24-UI-247142 is modified, as outlined above.

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

DATE of Service: March 26, 2024

⁵ Regarding the \$300 in overpaid LWA benefits for week 31-20, the order under review concluded, in relevant part, that “[t]he administrative decision... is modified... to adjust the total overpayment amount (reducing it from \$6,157.00 to \$5,857.00, because the parties were not notified that Lost Wages Assistance benefits would be at issue in this case).” Order No. 24-UI-247142 at 17. However, for purposes of judicial economy, EAB notes that the same principles barring the Department from assessing an overpayment for regular UI and FPUC benefits for the weeks at issue also applies to LWA benefits claimant received for week 31-20.

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 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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