EO: 200
BYE: 202148

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0187

Order No. 24-UI-246654 Affirmed ~ Late Request for Hearing Allowed ~ Ineligible for PUA
Order No. 24-UI-246663 Modified ~ No Overpayment or Penalties

PROCEDURAL HISTORY: On October 13, 2023, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective December 6, 2020. On October 19, 2023, the Department served notice of an administrative decision based in part on the October 13, 2023, PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of $7,995 in PUA and $10,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, and a $2,819.25 monetary penalty. On November 2, 2023, the PUA determination became final without claimant having filed a request for hearing.

On November 8, 2023, claimant filed a late request for hearing on the PUA determination and a timely request for hearing on the overpayment decision. On January 22, 2024, ALJ Adamson conducted a hearing, and on January 26, 2024, issued Order No. 24-UI-246654, allowing claimant's late request for hearing on the determination but affirming the determination on the merits. Also on January 26, 2024, ALJ Adamson issued Order No. 24-UI-246663, modifying the overpayment decision by concluding that claimant was overpaid $7,995 in PUA and $10,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that he was required to repay, but that claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and was not liable for a monetary penalty.

On February 15, 2024, claimant filed applications for review of Orders No. 24-UI-246654 and 24-UI-246663 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-246654 and 24-UI-246663. For case-tracking

purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0187 and 2024-EAB-0177).

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 24-UI-246654, which allowed claimant's late request for hearing on the October 13, 2023, PUA determination and affirmed the determination, is **adopted**. Additionally, the portion of Order No. 24-UI-246663 concluding that claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and is not liable for a monetary penalty, is **adopted**. The rest of this decision addresses claimant's liability for the overpayment.

FINDINGS OF FACT: (1) Claimant filed an initial application for PUA benefits on April 4, 2021. The Department initially determined the claim to be valid, based on the representations made in the application, with a weekly benefit amount of $205.

(2) Claimant claimed benefits for the weeks from December 6, 2020, through September 4, 2021 (weeks 50-20 through 35-21). These are the weeks at issue. Claimant was paid $205 in PUA benefits each of these 39 weeks, totaling $7,995. Claimant was also paid $300 in FPUC benefits each week for weeks 53-20 through 35-21, totaling $10,800. Each of these payments was made on or before January 24, 2022.[1]

(3) On October 13, 2023, the Department issued the October 13, 2023, PUA determination, concluding that claimant was ineligible for PUA benefits effective December 6, 2020, because he was not a "covered individual" as defined by the CARES Act.[2] That determination became final on November 2, 2023. However, claimant filed a late request for hearing on the PUA determination. Order No. 24-UI-246654 allowed the late request for hearing but affirmed the PUA determination on the merits. Claimant filed an application for review with EAB. As previously noted, this decision adopts the findings and conclusions of Order No. 24-UI-26654.

(4) On October 19, 2023, the Department issued the October 19, 2023, overpayment decision, concluding in relevant part that claimant willfully made a misrepresentation to obtain benefits, and assessing an overpayment of $7,995 in PUA benefits and $10,800 in FPUC benefits that he was required to repay. However, Order No. 24-UI-246663 modified the October 19, 2023, overpayment decision by concluding that claimant was required to repay the assessed overpayment, but that claimant's mistaken belief and representation that his occasional performance of odd jobs for a family friend constituted operation of his own business did not rise to the level of willful misrepresentation to obtain benefits. Order No. 24-UI-246663 at 2, 8. Claimant filed an application for review with EAB. This decision adopts the findings and conclusions of Order No. 24-UI-26663 that claimant did not make a willful misrepresentation to obtain benefits. The Department has not waived recovery of the assessed overpayment.

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[1] EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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] 15 U.S.C. § 9021(a)(3).

CONCLUSIONS AND REASONS: Claimant was overpaid $7,995 in PUA benefits and $10,800 in FPUC benefits for the weeks at issue. However, the Department lacked authority to amend the original decisions allowing payment of benefits for those weeks, and claimant is therefore not liable to repay the overpayments.

Overpayment. ORS 657.310(1)(a) and (c) provide 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 during the five-year period following the date the decision establishing the erroneous payment becomes final. ORS 657.310(1)(a) 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.*

Overpayment of PUA benefits is governed by 15 U.S.C. § 9021(d)(4). That provision provides that, absent a waiver of recovery by the State, States must require individuals to repay PUA benefits to which they are not entitled. Further, per U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (UIPL 16-20) (April 5, 2020) Change 4 at I-26, "the State agency must recover the amount of PUA to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [unemployment insurance] paid by the State."

FPUC is a federal benefits program that provided eligible individuals with $300 per week, in addition to their regular UI or PUA weekly benefit amount, during the period of December 27, 2020, through September 4, 2021 (weeks 53-20 through 35-21). *See* UIPL 15-20 (April 4, 2020) at 6. Individuals were eligible to receive the full $300 FPUC benefit if they were eligible to receive at least one dollar of PUA benefits for the claimed week. UIPL 15-20 at I-5. UIPL 15-20 at I-7 provides, in relevant part, "If an individual is deemed ineligible for regular compensation [or PUA] in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created."

Under 15 U.S.C. § 9023(f)(3)(A), the Department may recover the FPUC benefits by deduction from any future FPUC payments payable to the claimant or from any future unemployment compensation payable to the claimant under any state or federal unemployment compensation law administered by the Department during the three-year period following the date the claimant received the FPUC benefits to which they were not entitled. While an FPUC overpayment may be offset by other State and Federal unemployment benefits payable during this three-year period, State agencies "must recover the amount of FPUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [UI] paid by the State." UIPL 15-20 at I-7. "After three years, a State may continue to recover FPUC overpayments through means other than benefit offsets, according to State law." UIPL 15-20 at I-7.

Therefore, under ORS 657.310(1)(a) and (c) and U.S. Department of Labor guidance, when a PUA or FPUC overpayment is caused by an individual's false statement that was not made willfully to obtain benefits, the individual is liable to repay the benefits or have the amount deducted from any future benefits otherwise payable during the five-year period following the date the overpayment decision becomes final.

The October 13, 2023, PUA determination, which has not been disturbed on appeal, concluded that claimant was ineligible for PUA benefits effective December 6, 2020. Claimant was therefore ineligible for FPUC benefits during the period he was ineligible for PUA benefits. Claimant was paid $7,995 in PUA benefits and $10,800 in FPUC benefits for the weeks at issue, which coincided with the period claimant was ineligible to receive PUA and FPUC benefits. As Order No. 24-UI-246663 concluded, and which this decision adopts, claimant's mistaken belief and representation that his occasional performance of odd jobs for a family friend constituted operation of his own business did not rise to the level of willful misrepresentation to obtain benefits. Order No. 24-UI-246663 at 2, 8. By representing on his initial application for PUA benefits that he was a self-employed individual, claimant, without intending or knowing he was doing so, made a false statement that caused him to be paid PUA and FPUC benefits to which he was not entitled. Accordingly, claimant was overpaid $7,995 in PUA benefits and $10,800 in FPUC benefits for the weeks at issue, and the overpayment is governed by ORS 657.310(1)(a) and (c).

However, for reasons explained in greater detail below, the Department lacked authority to amend the original decisions allowing payment of benefits for the weeks at issue, and to assess an overpayment regarding those benefits.

Authority to amend original decisions allowing payment. 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. 24-UI-246663 concluded that claimant was overpaid a total of $7,995 in PUA benefits and $10,800 in FPUC benefits for the weeks at issue that he was required to repay to the Department. Order No. 24-UI-246663 at 8. As discussed above, the record shows that claimant was overpaid those benefits. However, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue more than a year later, and claimant is not liable to repay the overpayment.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each weekly claim on or before January 24, 2022. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department has one year to amend the decisions allowing payment. The October 19, 2023, overpayment decision determined that claimant was not entitled to the PUA and FPUC benefits he was paid for the weeks at issue, and was thus overpaid those benefits. That administrative decision was based on the October 13, 2023, PUA determination, which concluded that claimant was ineligible to receive PUA benefits effective December 6, 2020. Because the October 19, 2023, overpayment decision, rather than the October 13, 2023, PUA determination, concluded that claimant was not entitled to the benefits he was paid for weeks 50-20 through 35-21 due to his ineligibility for PUA, it amended the original decisions allowing payment for each of those weeks to a decision assessing an overpayment for those weeks.

The October 19, 2023, overpayment decision was issued more than one year after the original decisions to allow payment for the weeks at issue, and therefore the Department was not authorized to amend those original decisions pursuant to ORS 657.267(4) in the absence of willful misrepresentation or fraud. The October 19, 2023, overpayment decision alleged that the overpayment was the result of willful misrepresentation. However, Order No. 24-UI-246663 modified that decision by concluding that the overpayment was the result of claimant erroneously representing that he had been operating his own business—a false statement that was "not a case of *willful* misrepresentation." Order No. 24-UI-246663 at 8 (emphasis added). This decision has adopted those findings and conclusions. Accordingly, the overpayment was not the result of willful misrepresentation or fraud, and the one-year limitation on amendments applies.

The Department therefore lacked authority to amend the original decisions allowing payment of benefits for the weeks at issue to a decision assessing an overpayment for those weeks, and claimant is not liable to repay the overpayment of $7,995 in PUA benefits and $10,800 in FPUC benefits.

DECISION: Order No. 24-UI-246654 is affirmed. Order No. 24-UI-246663 is modified, as outlined above.

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

DATE of Service: <u>March 22, 2024</u>

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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