

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0379

Reversed & Remanded
Revocada y Remitida Para Otra Audiencia

Esta decisión concluye que se revoca la Orden No. 24-UI-252236 y se devuelve el asunto para otra audiencia. Partes de esta decisión están traducidas al español. Sin embargo, hay información importante en esta decisión, que aparece solo en inglés, con respecto a por qué la Junta de Apelaciones de Empleo (EAB, por sus siglas en inglés) determinó que este asunto debe ser remitido para otra audiencia. Si necesita interpretación en español de la parte de esta decisión que aparece en inglés, puede obtenerla llamando a la EAB al 503-278-2077 y solicitando un intérprete de español.¹

PROCEDURAL HISTORY: On January 26, 2024, 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 \$1,080 overpayment of regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department, a \$162 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 195019). Claimant filed a timely request for hearing. On March 15, 2024, ALJ Monroe conducted a hearing interpreted in Spanish, and on April 15, 2024 issued Order No. 24-UI-252236, modifying decision # 195019 by concluding that claimant was liable to repay overpayments of \$2,280 in regular UI benefits and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits, but did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and was not liable for a monetary penalty or penalty disqualification. On April 19, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIAL PROCESAL: *El 26 de enero de 2024, el Departamento de Empleo de Oregón (el Departamento) mandó por correo una decisión administrativa que concluye que el reclamante*

¹ This decision concludes that Order No. 24-UI-252236 is reversed and the matter remanded for another hearing. Portions of this decision are translated into Spanish. However, there is important information in this decision that appears only in English regarding why the Employment Appeals Board (EAB) determined that the matter should be remanded for further proceedings. If you require Spanish interpretation of the portion of this decision that appears in English, you can obtain that by calling EAB at 503-278-2077 and requesting a Spanish interpreter.

intencionalmente hizo una declaración falsa y no informó el Departamento de un hecho material con el motivo de obtener beneficios. La decisión impuso un sobrepago de \$1,080 de los beneficios del seguro de desempleo regular (UI regular) que el reclamante debía reembolsar al Departamento, una multa monetaria de \$162, y una multa de 52 semanas de descalificación de beneficios futuros (decisión # 195019). El reclamante presentó una solicitud de audiencia a tiempo. El 15 de marzo de 2024, la Jueza Administrativa Monroe llevó a cabo una audiencia interpretada en español, y el 15 de abril de 2024, ella emitió la Orden No. 24-UI-252236, modificando la decisión # 195019 al concluir que el reclamante era responsable de reembolsar un sobrepago de \$2,280 en beneficios de desempleo regulares y \$1,200 en beneficios federales de Compensación por Desempleo Pandémico (FPUC), pero que no hizo intencionalmente una declaración falsa ni faltó de informar el Departamento de un hecho material para obtener beneficios, y no era responsable de pagar una multa monetaria ni tener una multa de semanas de descalificación de beneficios. El 19 de abril de 2024, el reclamante presentó una solicitud de revisión ante la Junta de Apelaciones de Empleo (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record. The parties may offer new information into evidence, including the information included with the written argument, at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing. *See* ORS 657.275(2).

ARGUMENTO POR ESCRITO: *El reclamante presentó un argumento por escrito a EAB con su solicitud de revisión de la orden judicial. Sin embargo, el reclamante no declaró que envió una copia de su argumento por escrito a todas las partes en este caso, de acuerdo con OAR 471-041-0080(2)(a) (13 de mayo de 2019). El argumento también contiene información que no es parte del expediente de este caso. Las partes pueden ofrecer nueva información en la nueva audiencia, incluida la información en el argumento escrito. En esa audiencia, se determinará si la nueva información será incluida en el expediente. Las partes deben seguir las instrucciones en el aviso de la audiencia con respecto a los documentos que desean que se consideren en la audiencia. Estas instrucciones indicarán a las partes que proporcionen copias de dichos documentos al juez administrativo y a las otras partes antes de la fecha de la audiencia. Ver ORS 657.275(2).*

FINDINGS OF FACT: (1) On September 12, 2019, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a monetarily valid claim for regular UI benefits with a weekly benefit amount (WBA) of \$477.

(2) On July 8, 2020, claimant filed a reopened claim after working for, and separating from, A&J Landscape Maintenance, Inc. Claimant subsequently claimed and was paid benefits for the weeks including July 5, 2020, through August 8, 2020 (weeks 28-20 through 32-20). These are the weeks at issue. All benefit payments for the weeks at issue were made on or before August 10, 2020.²

² 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.

(3) On March 19, 2021, the Department issued an administrative decision concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving benefits effective June 21, 2020 (decision # 151156). Exhibit 1 at 4. On April 8, 2021, decision # 151156 became final without claimant having filed a request for hearing on that decision.

(4) On January 26, 2024, the Department issued decision # 195019, concluding that claimant was not entitled to the benefits he received for the weeks at issue due to the disqualification imposed by decision # 151156, and assessing an overpayment and penalties.

(5) On February 7, 2024, claimant filed a late request for hearing on decision # 151156 and a timely request for hearing on decision # 195019. On February 15, 2024, Order No. 24-UI-248172 was issued, dismissing claimant's late request for hearing on decision # 151156, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. Claimant did not file a response to the questionnaire within 14 days and another order was not issued regarding the matter by the Office Administrative Hearings (OAH).

(6) On March 5, 2024, claimant filed an application for review of Order No. 24-UI-248172 with EAB. On May 23, 2024, EAB issued EAB Decision 2024-EAB-0242-R, setting aside Order No. 24-UI-248172, allowing claimant's late request for hearing on decision # 151156, and remanding the matter for a hearing on the merits of that decision.³

CONCLUSIONS AND REASONS: Order No. 24-UI-252236 is reversed and the matter remanded for another hearing consistent with the outcome of claimant's appeal of decision # 151156, which has been remanded for a hearing on the merits of the work separation decision.

CONCLUSIONES Y RAZONES: *Se revoca la Orden No. 24-UI-252236 y se devuelve este asunto para otra audiencia de conformidad con el resultado de la apelación del reclamante de la decisión # 151156, que ha sido remitida para una audiencia sobre los méritos de la decisión sobre la separación del trabajo.*

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:

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 facts will remain in the record.

(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.)

The order under review concluded that claimant was liable to repay an overpayment of benefits received for the weeks at issue because decision # 151156, which disqualified claimant from receiving benefits for the weeks at issue, was "final" after claimant's late request for hearing on that decision was dismissed by Order No. 24-UI-248172. Order No. 24-UI-252236 at 3. The record does not support this conclusion.

Order No. 24-UI-248172, issued February 15, 2024, dismissed claimant's late request for hearing on decision # 151156. However, claimant filed a timely application for review of that order, and on May 24, 2024, EAB issued EAB Decision 2024-EAB-0242-R, setting aside Order No. 24-UI-248172, allowing claimant's late request for hearing, and remanding the matter for a hearing on the merits of decision # 151156. Therefore, decision # 151156 is not final. The outcome of claimant's appeal of decision # 151156 may be determinative of whether claimant was entitled to benefits for the weeks at issue because, if claimant is not disqualified from receiving benefits for the weeks at issue based on a work separation, the record suggests he would be entitled to the benefits he received and he would not

be overpaid. It is therefore appropriate to remand this matter to OAH to accompany the remand hearing on the merits of decision # 151156.

Further, the order under review concluded that the Department's allegation of willful misrepresentation in connection with the assessed overpayment was not proven. Order No. 24-UI-252236 at 6. The record suggests that a period of more than three years elapsed between the payment of benefits and the issuance of decision # 195019. The one-year limitation in ORS 657.267(4) on amending decisions from granting to denying benefits may therefore be applicable to the weeks at issue. For this reason, if the evidence at the remand hearing suggests that claimant was not entitled to the benefits he received for the weeks at issue, inquiry should be made into whether the Department was authorized under ORS 657.267(4) to amend the original decisions granting benefits for those weeks to decisions denying benefits for those weeks, and if not, claimant's liability to repay such an overpayment would likely not be established.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant is liable for an overpayment of benefits, Order No. 24-UI-252236 is reversed, and this matter is remanded to accompany the remand hearing on decision # 151156.

DECISION: Order No. 24-UI-252236 is set aside, and this matter remanded for further proceedings consistent with this order.

DECISIÓN: *Se deja sin efecto la Orden No. 24-UI-252236 y se devuelve este asunto para que se sigan los procedimientos de conformidad con esta orden.*

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

DATE of Service: May 24, 2024

FECHA de Servicio: 24 de mayo de 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-252236 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTA: *La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 24-UI-252236, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.*

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.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.