

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0426

Modified
Late Request to Reopen Allowed
No Overpayment or Penalties

PROCEDURAL HISTORY: On March 2, 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, assessing an overpayment of \$12,189 in combined state and federal benefits that claimant was required to repay, a \$3,656.70 monetary penalty, and a 52-week penalty disqualification from future benefits (decision #193439). Claimant filed a timely request for hearing. On May 10, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 23, 2023. On May 23, 2023, claimant failed to appear at the hearing, and ALJ Fraser issued Order No. 23-UI-225799, dismissing claimant's request for hearing due to her failure to appear. On June 12, 2023, Order No. 23-UI-225799 became final without claimant having filed a request to reopen the hearing.

On July 27, 2023, claimant filed a late request to reopen the hearing. On November 21, 2023, the Department served notice of an administrative decision that canceled and replaced decision # 193439, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits and assessing an overpayment of \$7,106 in combined state and federal benefits that claimant was required to repay, a \$2,131.80 monetary penalty, and a 44-week penalty disqualification from future benefits (decision # 200229). OAH applied claimant's request to reopen the hearing on decision # 193439 to decision # 200229, which cancelled and replaced decision # 193439.

On April 3, 2024, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on April 19, 2024 issued Order No. 24-UI-252606, allowing claimant's late request to reopen the hearing and modifying decision # 200229 by concluding that claimant was overpaid \$3,506 in regular unemployment insurance (regular UI) and \$3,600 in Federal Pandemic Unemployment Compensation

(FPUC) benefits that claimant was required to repay, but that claimant did not willfully make a misrepresentation of fact, and therefore was not liable for a monetary penalty or penalty disqualification weeks from future benefits. On May 7, 2024, claimant filed an application for review of Order No. 24-UI-252606 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer both filed written arguments. EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, both parties' arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the respective parties' reasonable control prevented them 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 hearing record.

EAB considered the entire hearing record. EAB agrees with the portions of Order No. 24-UI-252606 allowing claimant's late request to reopen the hearing and concluding that claimant did not willfully make a misrepresentation of fact, and therefore was not liable for a monetary penalty or penalty disqualification. Pursuant to ORS 657.275(2), those portions of Order No. 24-UI-252606 are **adopted**. The remainder of this decision addresses claimant's liability for repayment of the overpaid benefits.

FINDINGS OF FACT: (1) On March 18, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$357.

(2) Claimant claimed benefits for the weeks from June 14 through August 15, 2020 (weeks 25-20 through 33-20), September 6 through 12, 2020 (week 37-20), September 20 through 26, 2020 (week 39-20), and October 4 through 24, 2020 (weeks 41-20 through 43-20). These are the weeks at issue.¹ The Department paid claimant a total of \$3,506 in regular UI benefits and \$3,600 in FPUC benefits for the weeks at issue. The Department paid these benefits to claimant between June 22 and October 26, 2020.²

(3) Claimant performed work for the employer during each of the weeks at issue and reported earnings for each of those weeks. However, while claimant earned more than her weekly benefit amount for each of the weeks at issue, she reported earnings that were less than her weekly benefit amount. Had claimant correctly reported her earnings for the weeks at issue, the Department would not have paid her benefits for those weeks.

(4) On August 17, 2020, the Department issued a Benefit Earnings Audit to the employer, requesting information on claimant's earnings for the period of March 29 through August 1, 2020. On August 27,

¹ The order under review included the week of October 25, 2020, through October 31, 2020 (week 44-20) as one of the weeks at issue. Order No. 24-UI-252606 at 2–3. However, the record shows that claimant reported earnings in excess of her weekly benefit amount for that week, and that the Department therefore paid claimant no benefits for that week. *See* Exhibit 2 at 4. No overpayment was assessed for week 44-20, and the week is not at issue in this matter.

² EAB has taken notice of this fact, which is 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.

2020, the employer submitted their response to the audit, including their accounting of claimant's earnings for those weeks.

(5) On January 3, 2023, the Department issued a Benefit Earnings Audit to the employer, requesting information on claimant's earnings for the period of August 2, 2020, through January 30, 2021. On January 13, 2023, the employer submitted their response to the audit, including their accounting of claimant's earnings for those weeks.

(6) On March 2, 2023, the Department issued decision # 193439, which concluded that claimant was not entitled to benefits for the weeks at issue because she had earned more than her weekly benefit amount for those weeks. The Department based this conclusion, in part, on the employer's responses to the Benefit Earnings Audits from August 2020 and January 2023. Additionally, the Department found that claimant was not entitled to benefits for an additional period of weeks on the basis of another administrative decision issued on March 2, 2023, which concluded that claimant had quit work without good cause. The March 2, 2023, work separation decision was later reversed at hearing. As a result, on November 21, 2023, the Department issued decision # 200229, reducing the overpayment assessed in decision # 193439 by removing the weeks for which claimant was found ineligible for benefits solely on the basis of the work separation.

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 the March 2 and November 21, 2023, overpayment decisions, and claimant therefore does not have to repay the overpaid benefits.

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.)

The order under review concluded that claimant was overpaid state and federal benefits for the weeks at issue that she must repay. Order No. 24-UI-252606 at 9. However, 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 the March 2 and November 21, 2023, overpayment decisions.

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 October 26, 2020. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department had one year to amend the decisions to allow benefits.

On March 3, 2023, the Department issued decision # 193439 concluding that claimant was not entitled to the benefits she received for the weeks at issue, including weeks claimant was considered ineligible for benefits based on an administrative decision the Department issued denying claimant benefits based on a work separation. On November 21, 2023, the Department issued decision # 200229, reducing the overpayment amount to account for the work separation decision having been reversed at hearing, but retaining the assessed overpayment relating to the weeks at issue in this matter. Claimant did not report that she earned more than her weekly benefit amount for each of the weeks at issue, resulting in the overpayment of benefits.

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). Regardless of whether the original decisions to allow payment are considered to have been amended by the March overpayment decision or the November 2023 overpayment decision, the amending decision came in 2023, more than a year after the original decisions to allow payment in 2020. 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. Claimant therefore is not liable to repay the overpaid regular UI or FPUC benefits for the weeks at issue.

DECISION: Order No. 24-UI-252606 is modified, as outlined above.

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

DATE of Service: June 21, 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.

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 الاستئناف 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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