

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0444

Reversed
Federal Overpayment Waived

PROCEDURAL HISTORY: On August 18, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant’s request to waive recovery of \$900 in Federal Pandemic Unemployment Compensation (FPUC) benefits that she was overpaid (decision # 103217). Claimant filed a timely request for hearing. On April 17, 2024, ALJ Chiller conducted a hearing, and on May 1, 2024, issued Order No. 24-UI-253314, affirming decision # 103217. On May 13, 2024, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 20, 2021, claimant filed an initial application for unemployment insurance benefits. The Department determined that the claim was monetarily valid for regular unemployment insurance (regular UI) benefits with a weekly benefit amount of \$282.

(2) Claimant thereafter claimed benefits for the weeks from April 4 through 17, 2021 (weeks 14-21 and 15-21) and August 1 through 7, 2021 (week 31-21). Claimant certified on each of these weekly claims that she was unable to work due to illness. Claimant was paid \$282 in regular UI benefits and \$300 in FPUC benefits for each of these weeks. These are the weeks at issue.

(3) On May 7, 2021, the Department issued an administrative decision concluding that claimant was not able to work for the weeks from April 4 through 24, 2021 (weeks 14-21 through 17-21) and was ineligible for benefits for those weeks and until the reason for the denial ended (decision # 152415).

(4) Based on decision # 152415, the Department issued an administrative decision concluding that claimant had been overpaid benefits, including regular UI benefits and \$900 in FPUC benefits, for the weeks at issue. Claimant requested a hearing on the overpayment administrative decision, but the request was ultimately dismissed due to claimant’s failure to appear at the hearing, and has since become final.¹

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,

(5) On August 12, 2022, claimant filed requests to waive recovery of overpaid regular UI benefits and FPUC benefits for the weeks at issue. The Department granted claimant's waiver request as to the regular UI benefits, concluding that "the overpayment was found to have been without claimant fault" and that "recovery of the overpaid benefits would be against equity and good conscience." Exhibit 2 at 1. The Department denied the waiver request as to \$900 in overpaid FPUC benefits for the weeks at issue by concluding that claimant "misreported information which caused the incorrect payment of benefits." Exhibit 2 at 2.

(6) Claimant's monthly debt payments and required expenses equal or exceed 90 percent of her monthly income, and claimant has no ability to repay \$900 to the Department.

CONCLUSIONS AND REASONS: Recovery of \$900 in overpaid FPUC benefits for the weeks at issue is waived.

Under ORS 657.317(2)(a), the Department "may waive recovery of all or any part of overpaid benefits subject to repayment or deduction under ORS 657.310(1) or 657.315(1)" if the Department finds "that recovery of the benefits would be against equity and good conscience." Per ORS 657.317(2)(b), the Department may not waive recovery of overpaid benefits that are subject to the penalty imposed under ORS 657.310(2). ORS 673.310(2) provides for the assessment of monetary penalties when an overpayment results from an individual having willfully made a misrepresentation to obtain benefits pursuant to ORS 657.215.

Waiver of FPUC overpayments is governed by the provisions of Section 2104(f)(2)(A) and (B) of the CARES Act, 15 U.S.C. § 9023(f), which requires, for waiver to be granted, that the overpayment of FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience.

The order under review concluded that the evidence did not show that claimant was without fault for the overpayment at issue, and claimant was therefore not entitled to waiver of recovery of overpaid FPUC benefits. Order No. 24-UI-253314 at 4. The record does not support this conclusion.

Fault. The Department alleged that claimant was ineligible to receive benefits for the weeks at issue because she was not able to work during those weeks due to illness. As a matter of law, an overpayment of \$300 in FPUC benefits for each of the three weeks at issue, totaling \$900, has been established on that basis by an administrative decision that has become final. Claimant's waiver eligibility is, in part, dependent on whether claimant was "without fault" in the Department paying her benefits for the weeks at issue despite not being able to work during those weeks.

Federal guidance provides that in general, "an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility." Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022).

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.

At hearing, the Department's witness was asked whether claimant certified being able to work in making her claims for the weeks at issue, and replied, "I don't have that at this moment." Transcript at 9-10. In contrast, claimant was asked at hearing if she recalled "disclosing to the Employment Department that you were unable to work for a period of about 20 days [beginning April 4, 2021] due to an illness or some kind of medical condition," and claimant testified, "I do. I do remember disclosing that." Transcript at 13. Claimant explained the medical problems she experienced at that time and testified that she nonetheless claimed benefits for the weeks at issue because "I didn't fully understand that because I was suffering meant I wasn't eligible for benefits. I understand that now, but at the time I thought, because I had what I felt was a valid reason to not be able to work, I thought that was sufficient." Transcript at 13. Because claimant's testimony was un rebutted by the Department, it is more likely than not that claimant certified in her claims for weeks 14-21 and 15-21 that she was unable to work due to illness.

Further, it can reasonably be inferred from claimant's misunderstanding that reporting an inability to work for medical reasons would entitle her to benefits that she, more likely than not, similarly certified that she was unable to work during week 31-21. Claimant therefore correctly provided the Department with required information that she was unable to work during the weeks as issue, and was without fault in being overpaid \$900 in FPUC benefits for those weeks on the basis of her inability to work.

Equity and good conscience. With respect to the "contrary to equity and good conscience" element of the FPUC overpayment waiver analysis, federal guidance provides that states may defer to state law in defining what it means for repayment to be contrary to equity and good conscience, or may use the federal standard. UIPL 20-21 Change 1, at 10. The federal standard provides that recovery is "contrary to equity and good conscience" when one of at least three circumstances are present. Those circumstances are: (1) recovery would cause financial hardship to the person from whom it is sought; (2) the recipient of the overpayment can show (regardless of their financial situation) that due to the notice that such payment would be made or because of the incorrect payment, either they have relinquished a valuable right or changed positions for the worse; or (3) recovery would be unconscionable under the circumstances. UIPL 20-21 Change 1, at 10-13. The guidance elaborates that recovery would cause financial hardship where "review of the individual's income to debts (including copies of pay records and bills) reflects the hardship caused by having to repay an overpayment because the individual needs much of their current income and liquid assets (including the CARES Act benefits received) to meet ordinary and necessary living expenses and liabilities." UIPL 20-21 Change 1, at 11.

According to the state standard, recovering overpaid benefits is against equity and good conscience if: (1) the person requesting a waiver has "no means to repay the benefits," and (2) "has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits." OAR 471-030-0053(3) (effective June 23, 2021). The Department uses the IRS Collection Financial Standards to determine maximum allowable household expenses. OAR 471-030-0053(2).

The record is unclear as to which standard the Department elected to use in assessing claimant's waiver request, as it denied the request on other grounds. However, the Department's witness testified that claimant would have met the state standard for equity and good conscience had the waiver not been denied on the other grounds. *See* Transcript at 10. This is consistent with the Department's having granted claimant's waiver request as to overpaid regular UI benefits for the weeks at issue. As the representative did not cite the federal standard in her testimony regarding equity and good conscience, or

suggest that the waiver would have otherwise been denied on that basis had the federal standard been used, it is reasonable to infer that the Department elected to proceed under the state standard. Further, the Department's testimony and the granting of the waiver as to the overpaid regular UI benefits established that claimant likely has no means to repay the \$900 in overpaid FPUC benefits, and has total allowable household expenses that equal or exceed 90 percent of the total household income less unemployment benefits. Therefore, requiring repayment of the overpaid FPUC benefits would be against equity and good conscience under the state standard.

Because claimant was without fault in causing the overpayment, and requiring repayment would be against equity and good conscience, claimant's request to waive recovery of the overpaid FPUC benefits is granted.

DECISION: Order No. 24-UI-253314 is set aside, as outlined above.

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

DATE of Service: June 25, 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.

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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 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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