

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0549

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On August 31, 2022, 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 \$2,684 in regular unemployment insurance (regular UI) benefits and \$900 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$537.60 monetary penalty, and a 20-week penalty disqualification from future benefits (decision # 193768). Claimant filed a timely request for hearing. On June 26, 2024, ALJ Chiller conducted a hearing, and on July 5, 2024 issued Order No. 24-UI-258168, affirming decision # 193768. On July 23, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Searose Yard & Home LLC employed claimant as a laborer and painter from July 8, 2020 until August 18, 2021.

(2) On August 18, 2021, claimant was involved in an argument with a coworker. The employer believed that claimant had demonstrated difficulty getting along with coworkers on previous occasions. The employer therefore told claimant that “there was no more work for [him] because [he] can’t work with other employees around there” and that “they’re gonna have to let [him] go.” Transcript at 19. Claimant retrieved his belongings from the employer’s office and was given his final paycheck the following day. Claimant knew that further painting work would have been available to him on August 19 and 20, 2021, and likely thereafter, had the employer not discharged him for his conduct on August 18, 2021.

(3) After the employer informed claimant that he had been discharged, claimant asked the employer, “Can I please file for unemployment?” to which the employer responded, “[A]bsolutely file for unemployment.” Transcript at 25. This exchange was “the only reason” claimant filed an initial claim for unemployment insurance benefits, which he did on August 18, 2021. Transcript at 25. In that initial claim, claimant reported that he “had been laid off due to lack of work.” Transcript at 7. Claimant believed that he would not be paid unemployment insurance benefits if the Department considered his work separation a discharge.

(4) The Department determined that claimant had a monetarily valid claim for regular UI benefits with a weekly benefit amount (WBA) of \$244. Claimant thereafter filed weekly benefit claims including for the weeks of August 15, 2021 through October 30, 2021 (weeks 33-21 through 43-21). These are the weeks at issue. The Department paid claimant \$244 in regular UI benefits each week at issue, totaling \$2,684, and \$300 in FPUC benefits for weeks 33-21 through 35-21, totaling \$900. The maximum WBA in Oregon during week 33-21 was \$733.

(5) On August 23, 2021, claimant filed a weekly claim for the week of August 15, 2021 through August 21, 2021 (week 33-21). In it, claimant was asked, “Were you fired or suspended from a job last week?” to which claimant responded, “No.” Exhibit 5 at 2. Claimant knew when he gave this answer that he had been fired by the employer during the previous week. He nonetheless gave that answer because he thought that the employer would report the work separation to the Department as a layoff due to the employer’s phrasing that they “had no more work for [him],” and because of the exchange in which the employer told him he could file a claim. Transcript at 26. Claimant believed that representing the work separation to the Department as a layoff rather than a discharge would improve the likelihood that benefits would be paid. The Department paid claimant benefits for the weeks at issue based, at least in part, on claimant’s representation that he had not been discharged during week 33-21.

(6) On August 29, 2022, the Department issued decision # 111338, concluding that the employer discharged claimant for misconduct and that he was therefore disqualified from receiving unemployment insurance benefits effective August 15, 2021. Claimant filed a request for hearing on that decision which was ultimately dismissed due to claimant’s failure to appear at the hearing, and the decision has since become final.

CONCLUSIONS AND REASONS: Claimant made a willful misrepresentation to obtain benefits. Claimant was overpaid \$2,684 in regular UI benefits and \$900 in FPUC benefits that he is liable to repay to the Department, is assessed a \$537.60 monetary penalty, and is disqualified from receiving benefits for 20 weeks that claimant claims and would have otherwise received benefits.

Overpayment. 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. ORS 657.310(1). In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

Decision # 111338, issued August 29, 2022, concluded that the employer discharged claimant for misconduct and claimant was therefore disqualified from receiving benefits effective August 15, 2021. Exhibit 2 at 1. That administrative decision became final after claimant’s request for hearing on it was dismissed. The record does not suggest that claimant had sufficient qualifying earnings during the weeks at issue to end the disqualification. Accordingly, claimant was not entitled to receive benefits during the weeks at issue as a matter of law. Claimant was therefore overpaid \$2,684 in regular UI benefits and \$900 in FPUC benefits. Because the overpayment was caused by claimant misrepresenting material facts

regarding the work separation, as discussed below, he is liable to repay the overpaid benefits to the Department pursuant to ORS 657.310(1), and the Department may use any means authorized by law to recover the overpayment.

Misrepresentation. An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215.

The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052 (January 11, 2018), which provides, in pertinent part:

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

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(7) The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:

(a) For the first or second occurrence within 5 years of the occurrence for which a penalty is being assessed, 15 percent of the total amount of benefits the individual received but to which the individual was not entitled.

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Claimant represented to the Department in his benefit claim for week 33-21 that he had not been “fired or suspended from a job” during that week. However, the employer testified that she discharged claimant on August 18, 2021, immediately following his involvement in a dispute with a coworker, and in the context of ongoing discord between claimant and other members of the employer’s staff. Transcript at 14-15. Claimant testified that the employer phrased notice of his work separation as there being “no more work for me because I can’t work with the other employees around there.” Transcript at 19. Claimant further testified that he knew that the painting job that he had been working on was ongoing, and that there was still painting work to be done in the days that followed. Transcript at 22. It is reasonable to infer from this testimony that claimant knew that the work separation had not been due to a lack of painting work that the business needed done, which claimant would have understood to be a layoff. *See* Transcript at 25. Instead, the record shows that claimant knew that the employer had severed the employment relationship, despite having painting work that needed to be finished, due to claimant’s conduct on August 18, 2021. It is therefore reasonable to infer that claimant knew that day that he had been discharged. Accordingly, the record shows that claimant willfully misrepresented that he had not been fired during week 33-21.

Moreover, the record shows that claimant made this misrepresentation to obtain benefits. Claimant testified that his understanding of the unemployment insurance system was that a claimant must be “laid off for lack of work” to be eligible for benefits, and “if you get fired or quit you can’t collect unemployment.” Transcript at 30. Upon being informed of his discharge, claimant asked the employer to allow him to file a claim for benefits, which, given claimant’s mistaken beliefs regarding benefit eligibility, was apparently a request that the employer not report to the Department that they had discharged him and their reasons for doing so. Claimant misunderstood the employer’s reply that he could file a claim as an assurance that they would withhold information, or provide misleading information, to the Department about the separation so that he might be allowed benefits. Even if the employer had explicitly agreed to misreport the separation as a layoff to the Department, which they did not, claimant still had an obligation to answer truthfully that he had been discharged when making his claim. Claimant’s testimony that he believed he could not get benefits if he reported that he had been fired, and that the employer told him he was being “let go” because he “can’t work with other employees” shows that claimant willfully misrepresented the nature of the work separation in order to obtain benefits to which he might not otherwise have been entitled. As this willful misrepresentation caused an overpayment of benefits, claimant is subject to both a monetary penalty and a penalty disqualification from benefits, as described below.

The overpayment of benefits at issue related to ORS 657.176, in that claimant’s willful misrepresentation was made with the purpose of concealing from the Department that he had been discharged, potentially for misconduct, which may have subjected him to disqualification from benefits under ORS 657.176(2)(a).¹ Per the relevant calculation in OAR 471-030-0052(1)(b) for such a misrepresentation, the maximum WBA of \$733, divided by the total of overpaid benefits, \$3,584, equals

¹ ORS 657.176(2)(a) provides that an individual shall be disqualified from receiving benefits if the individual has “been discharged for misconduct connected with work[.]”

4.88. 4.88 multiplied by four equals 19.55. 19.55 rounded up to the nearest whole number is 20. Accordingly, claimant is subject to a 20-week penalty disqualification from benefits.

The Department did not allege any other instances of willful misrepresentation, and the record does not suggest any such instances occurred. *See* Transcript at 11. Therefore, under OAR 471-030-0052(7)(a), claimant is liable for a monetary penalty of 15% of the \$3,584 total overpayment, which equals \$537.60.

For these reasons, claimant made a willful misrepresentation to obtain benefits, and is liable to repay to the Department \$2,684 in regular UI benefits and \$900 in FPUC benefits, and is assessed a \$537.60 monetary penalty and a 20-week penalty disqualification from benefits.

DECISION: Order No. 24-UI-258168 is affirmed.

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

DATE of Service: August 15, 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 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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