

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0550

Modified
No Overpayment or Penalties

PROCEDURAL HISTORY: On May 4, 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 \$9,422 in regular unemployment insurance (regular UI) benefits and \$9,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$5,526.60 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On July 2, 2024, ALJ Scott conducted a hearing, and on July 3, 2024, issued Order No. 24-UI-258034, modifying the May 4, 2022, administrative decision by concluding that claimant was overpaid \$9,422 in regular UI benefits and \$9,000 in FPUC benefits that she was required to repay to the Department, but did not willfully make a misrepresentation or fail to report a material fact to obtain benefits and was therefore not liable for a monetary penalty or penalty disqualification. On July 24, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-258034 concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and is not liable for a monetary penalty or penalty disqualification. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-258034 is **adopted**. The rest of this decision addresses whether claimant is liable for an overpayment of benefits.

FINDINGS OF FACT: (1) In early April 2020, claimant was working for two employers: Klamath County and Basin Immediate Care. On or around April 12, 2020, Basin Immediate Care laid claimant off temporarily due to a lack of work related to the COVID-19 pandemic. Claimant continued to work full-time for Klamath County.

(2) Claimant mistakenly believed that she was entitled to unemployment insurance benefits due to her furlough from Basin Immediate Care, despite continuing to work full-time for Klamath County. On April 12, 2020, claimant filed an initial claim that was determined to be monetarily valid for regular UI benefits with a weekly benefit amount (WBA) of \$648. Claimant included both employers on her application for benefits with the Department.

(3) Claimant thereafter filed weekly benefit claims for the weeks including April 5, 2020, through April 25, 2020 (weeks 15-20 through 17-20) and May 3, 2020, through July 25, 2020 (weeks 19-20 through 30-20). These are the weeks at issue.

(4) During the weeks at issue, claimant reported only wages earned from Basin Immediate Care because she believed that she was not required to report earnings from Klamath County. Based on these reported earnings, the Department paid claimant regular UI benefits in the amounts of \$384 for the week of April 12, 2020, through April 18, 2020 (week 16-20), \$614 for the week of July 19, 2020, through July 25, 2020 (week 30-20), and \$648 for each of the remaining weeks at issue, totaling \$9,422. Additionally, the Department paid claimant was \$600 in FPUC benefits for each week at issue, totaling \$9,000. The Department paid all of these benefits to claimant on or before November 20, 2020.¹

(5) During each of the weeks at issue, claimant earned more than \$648 in wages from Klamath County that she did not report to the Department.

(6) On May 4, 2022, the Department issued the May 4, 2022, administrative decision, concluding that claimant was not eligible for benefits for the weeks at issue because she was not unemployed during those weeks.

CONCLUSIONS AND REASONS: Claimant was overpaid \$9,422 in regular UI benefits and \$9,000 in FPUC benefits for the weeks at issue. However, the Department lacked authority to amend the original decisions allowing benefits for those weeks, and claimant is therefore not liable for those overpayments.

Overpayment. An individual is not eligible to receive unemployment insurance benefits if they are not unemployed. ORS 657.155(1)(e) (“An *unemployed individual* shall be eligible to receive benefits with respect to any week”) (emphasis added). Per ORS 657.100(1), an individual is deemed “unemployed”:

in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount.

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.

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.*

Claimant did not rebut the assertions made by the Department and Klamath County that she earned more than \$648 in wages during each of the weeks at issue. *See* Transcript at 21. As claimant had remuneration payable for services performed in each of the weeks at issue that exceeded her WBA, she was not "unemployed" as defined by ORS 657.100(1), and therefore ineligible to receive regular UI or FPUC benefits for those weeks. Accordingly, claimant was overpaid all the benefits she received for the weeks at issue, totaling \$9,422 of regular UI benefits and \$9,000 of FPUC benefits. However, as explained in greater detail below, claimant is not liable to repay the benefits, as would otherwise be required by ORS 657.310(1), because the Department lacked authority to amend the original decisions allowing benefits to a decision denying benefits for the weeks at issue.

Authority to amend original decisions allowing 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 a total of \$9,422 in regular UI benefits and \$9,000 in FPUC benefits for the weeks at issue that she was required to repay to the Department. Order No. 24-UI-258034 at 7. 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 for the overpayments.

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 November 20, 2020. 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. Because the May 4, 2022, overpayment determination was issued more than one year after the original decisions to allow payment for the weeks at issue, the Department was not authorized to issue it pursuant to ORS 657.267(4) in the absence of willful misrepresentation or fraud.

Claimant was overpaid for the weeks at issue because she failed to report earnings from Klamath County, causing the Department to erroneously determine that she was unemployed and entitled to benefits. While the May 4, 2022, overpayment determination alleged that the overpayment was the result of willful misrepresentation, Order No. 24-UI-258034, as affirmed here, concluded that it was the result of claimant error that did *not* constitute willful misrepresentation. Order No. 24-UI-258034 at 7. Accordingly, the overpayments were 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 with a decision assessing an overpayment for those weeks, and claimant is not liable for the overpayment of \$9,422 of regular UI benefits and \$9,000 of FPUC benefits.

DECISION: Order No. 24-UI-258034 is modified, as outlined above.

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

DATE of Service: August 8, 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 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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