

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0558

Modified
Request to Reopen Allowed
Late Request for Hearing Allowed
No Overpayment

PROCEDURAL HISTORY: On August 22, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$1,014 in regular unemployment insurance (regular UI) benefits and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 111932). On September 9, 2022, decision # 111932 became final without claimant having filed a request for hearing. On September 23, 2023, claimant filed a late request for hearing. ALJ Kangas considered the request, and on November 2, 2023, issued Order No. 23-UI-240264, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 16, 2023. On November 16, 2023, claimant filed a timely response to the appellant questionnaire. On February 20, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-240264 was cancelled and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 111932.

On May 28, 2024, and June 4, 2024, notices were mailed to claimant that a hearing had been scheduled for June 11, 2024. Claimant failed to appear for the hearing, and on June 11, 2024, ALJ Frank issued Order No. 24-UI-256266, dismissing claimant's late request for hearing due to her failure to appear. On June 13, 2024, claimant filed a timely request to reopen the June 11, 2024, hearing. On July 8, 2024, ALJ Monroe conducted a hearing, and on July 15, 2024, issued Order No. 24-UI-259016, allowing claimant's request to reopen, canceling Order No. 24-UI-256266, allowing claimant's late request for hearing, and affirming decision # 111932 on the merits. On July 23, 2024, claimant filed an application for review of Order No. 24-UI-259016 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portions of Order No. 24-UI-259016 concluding that claimant showed good cause to reopen the June 11, 2024, hearing and good cause for filing the request for hearing late, and allowing claimant's requests as to those issues. Pursuant to ORS

657.275(2), those portions of Order No. 24-UI-259016 are **adopted**. The rest of this decision addresses claimant's liability for the overpayment of benefits.

FINDINGS OF FACT: (1) On March 21, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's claim was monetarily valid, with a weekly benefit amount (WBA) of \$507.

(2) Claimant filed weekly claims for benefits for the weeks of January 3, 2021, through January 16, 2021 (weeks 01-21 through 02-21). These are the weeks at issue. The Department paid claimant \$507 in regular UI benefits and \$300 in FPUC benefits for each week, totaling \$1,014 and \$600, respectively. The Department made each of these payments on or before January 19, 2021.¹

(3) On June 13, 2022, the Department issued an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective January 3, 2021. This administrative decision became final without claimant having filed a request for hearing, and remains undisturbed.

(4) On August 22, 2022, the Department issued decision # 111932, concluding that claimant was not entitled to receive unemployment insurance benefits for weeks 01-21 and 02-21 due to the disqualification imposed by the June 13, 2022, administrative decision, and assessing an overpayment for the amounts paid during those weeks.

CONCLUSIONS AND REASONS: Claimant was overpaid \$1,014 in regular UI benefits and \$600 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 the overpayment.

Overpayment. ORS 657.176 provides, in relevant part:

* * *

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

* * *

(c) Voluntarily left work without good cause[.]

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.*

The June 13, 2022, administrative decision disqualified claimant from receiving benefits effective January 3, 2021 because she voluntarily quit work without good cause. That decision remains undisturbed. The record does not suggest that claimant earned sufficient qualifying wages during weeks 01-21 or 02-21 to end the disqualification, and therefore claimant remained disqualified during the weeks at issue. Therefore, as a matter of law, claimant was not entitled to receive unemployment insurance benefits for the weeks at issue, and was overpaid \$1,014 in regular UI benefits and \$600 in FPUC benefits. However, the Department lacked authority to amend the original decisions allowing benefits for those weeks to a decision denying benefits and assess an overpayment.

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.)

Order No. 24-UI-259016 concluded that claimant was overpaid a total of \$1,014 in regular UI benefits and \$600 in FPUC benefits for the weeks at issue that she was required to repay to the Department. Order No. 24-UI-259016 at 9. 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 therefore not liable for the overpayment.

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 January 19, 2021. 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 decision # 111932 was issued on August 22, 2022, more than one year after the original decisions to allow payment for the weeks at issue, the Department was not authorized to amend the original decisions pursuant to ORS 657.267(4) in the absence of willful misrepresentation or fraud. Decision # 111932 alleged that the overpayment was the result of claimant error that did not constitute willful misrepresentation, and the record supports this conclusion. Accordingly, the overpayment was 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 denying benefits and assessing an overpayment for those weeks, and claimant is not liable for the overpayment of \$1,014 in regular UI benefits and \$600 in FPUC benefits.²

DECISION: Order No. 24-UI-259016 is modified, as outlined above.

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

DATE of Service: August 14, 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.

² The record suggests that claimant has repaid all or nearly all the overpaid benefits, and would therefore be entitled to a refund of the amount recovered. *See* Transcript at 21-22.

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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 desisyong ito.

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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