

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0677

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 a \$2,718 overpayment of regular unemployment insurance (regular UI) benefits, a \$8,400 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, and a \$1,200 overpayment of Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department, a \$1,667.70 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On July 22, 2024 and continued to August 28, 2024, ALJ Lucas conducted a hearing, and on September 3, 2024 issued Order No. 24-UI-264485, modifying the May 4, 2022 administrative decision by concluding that claimant received benefits to which he was not entitled and was liable for a \$2,718 overpayment of regular UI benefits, a \$8,400 overpayment of FPUC benefits, and a \$1,200 overpayment of LWA benefits, but that claimant did not make a false statement willfully to obtain benefits and therefore was not liable for a monetary penalty or penalty disqualification from future benefits. On September 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-264485 concluding that claimant received benefits to which he was not entitled but did not make a false statement willfully to obtain benefits and therefore was not liable for a monetary penalty or penalty weeks. Pursuant to ORS 657.275(2), those portions of Order No. 24-UI-264485 are **adopted**. The rest of this decision relates to whether claimant is liable to repay the regular UI, FPUC, and LWA overpayments he received for the weeks at issue.

FINDINGS OF FACT: (1) In early 2020, claimant worked as a full-time laborer for the employer, Big Jim's Home Repair. Between April 16 and April 23, 2024, claimant and the employer's owner had negotiations via text message that culminated in the owner changing claimant's job to a part-time sales job. Exhibit 3 at 3-6.

(2) On April 23, 2020, claimant filed an initial claim for regular UI benefits via the internet. The initial claim form called for claimant to list his employment history for the preceding 18 months. For each employer, claimant was required to indicate his status with that employer by selecting a status from a list in a drop-down menu. Claimant selected “still working” as his status with the employer. July 22, 2024, Transcript at 22. Claimant reported on his initial claim form that he was still working because he believed that he remained in an employment relationship with the employer.

(3) On April 24, 2020, the owner sent claimant an email outlining some aspects of the part-time sales job, and describing claimant’s employment relationship as “your part-time employment status.” Exhibit 3 at 7. Claimant replied that he felt he was not qualified to work a sales job, and would “stick to the part time labor position” instead. Exhibit 3 at 8. On April 25, 2024, the owner replied advising that claimant could text the evening before each workday and the owner would notify claimant if he could use him as a laborer the next day. Exhibit 3 at 9. Claimant texted the owner in this manner to inquire whether work was available through at least April 30, 2020, but the employer did not have work for claimant during that period. Exhibit 3 at 10-13.

(4) The Department determined that claimant had a monetarily valid claim for regular UI benefits with a weekly benefit amount of \$151. Thereafter, claimant claimed benefits for each of the weeks of April 19, 2020, through August 22, 2020 (weeks 17-20 through 34-20). These are the weeks at issue.

(5) The Department paid claimant regular UI benefits in the amount of \$151 for each of the weeks at issue, for a total of \$2,718 in regular UI benefits. The Department paid claimant FPUC benefits in the amount of \$600 for each of weeks 17-20 through 30-20, for a total of \$8,400 in FPUC benefits. The Department paid claimant LWA benefits in the amount of \$300 for each of weeks 31-20 through 34-20, for a total of \$1,200 in LWA benefits.

(6) Each of the payments the Department made to claimant for the weeks at issue were made on or before August 24, 2020.

(7) On March 4, 2021, the Department issued decision # 120807, which concluded that claimant voluntarily quit working for the employer without good cause on April 16, 2024, and therefore was disqualified from receiving benefits effective April 12, 2020. Exhibit 1 at 5, 7. Claimant filed a request for hearing on decision # 120807 but failed to appear for the hearing in the matter. On June 11, 2021, ALJ Micheletti issued Order No. 21-UI-168588, dismissing claimant’s hearing request due to his failure to appear and leaving undisturbed decision # 120807 and its conclusion that claimant had quit working for the employer without good cause on April 16, 2024. Claimant did not file an application for review of this order with EAB. On July 1, 2021, Order No. 21-UI-168588 became final.

(8) If claimant had reported on his initial claim form that he had voluntarily quit, rather than that he was still working for the employer, the Department would not have paid claimant for the weeks at issue. Instead, the Department would have stopped payment pending an investigation as to whether claimant’s voluntary quit was without good cause.

(9) On May 4, 2022, the Department issued the May 4, 2022, administrative decision. The May 4, 2022, administrative decision concluded that because claimant reported on his initial claim form that he was still working for the employer, claimant willfully made a misrepresentation and failed to report a

material fact to obtain benefits. The decision assessed a \$2,718 overpayment of regular UI benefits, a \$8,400 overpayment of FPUC benefits, and a \$1,200 overpayment of LWA benefits, that claimant was liable to repay the Department, along with a \$1,667.70 monetary penalty and a 52-week penalty disqualification from future benefits.

CONCLUSION AND REASONS: Order No. 24-UI-264485 is modified. Claimant is not liable to repay the overpayment amounts for the weeks at issue because ORS 657.267(4) prohibited the Department from amending its initial decisions to allow payment of benefits for those weeks to decisions for those weeks assessing an overpayment that claimant must repay.

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 for the weeks at issue, claimant received benefits to which he was not entitled and was overpaid \$2,718 in regular UI benefits, \$8,400 in FPUC benefits, and \$1,200 in LWA benefits. Order No. 24-UI-264485 at 8-13. The order further concluded that claimant was required

to repay the above amounts to the Department, but that claimant did not make a false statement willfully to obtain benefits and therefore was not liable for a monetary penalty or penalty weeks. Order No. 24-UI-264485 at 14-18. The order is correct that claimant received benefits to which he was not entitled but did not make a false statement willfully to obtain benefits and therefore was not liable for a monetary penalty or penalty weeks. However, claimant is not liable to repay the benefits he received for the weeks at issue because the Department did not have authority to amend its original decisions to allow payment by assessing an overpayment for the weeks at issue.

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 the claims on or before August 24, 2020. Because the decisions to allow payment did not require notice under ORS 657.267, the Department could only amend the decisions to allow payment within one year of the decisions, in the absence of “alleged willful misrepresentation or fraud.” ORS 657.267(4). The May 4, 2022, administrative decision amended the original decisions to allow payment for weeks 17-20 through 34-20 because it concluded that claimant was overpaid benefits for those weeks due to stating on his initial claim form that he was still working for the employer. The May 4, 2022, administrative decision was issued more than one year after the last decision allowing payment on August 24, 2020. Accordingly, the Department was not permitted to make such an amendment, unless claimant’s case was a case of willful misrepresentation or fraud.

As the order under review concluded, the record does not establish that claimant’s statement on his initial claim that he was still working for the employer amounted to willful misrepresentation or fraud. It is necessary point out that, as a matter of law, claimant’s work separation from the employer was a voluntary leaving. This is so because decision # 120807 so concluded, and, although claimant requested a hearing on that decision, claimant failed to appear at the hearing, which resulted in the issuance of Order No. 21-UI-168588. Order No. 21-UI-168588 dismissed claimant’s request for hearing, leaving decision # 120807 and its conclusion that claimant had quit working for the employer without good cause undisturbed. On July 1, 2021, Order No. 21-UI-168588 became final without claimant having appealed it.

Order No. 21-UI-168588 and its conclusion that decision # 120807 is undisturbed is therefore final and binding. Thus, under decision # 120807, as a matter of law, claimant voluntarily quit working for the employer on April 16, 2024. Claimant presented evidence at the hearing in this matter calculated to show that claimant had not quit working for the employer and remained in an employment relationship with the employer at the time he filed his initial claim. In his written argument, claimant asserted that this evidence proves that he did not provide incorrect information on his initial claim form by reporting that he was still working, and therefore should not have been adjudicated as having received benefits to which he was not entitled. Claimant’s Written Argument at 1. However, because claimant is deemed to have voluntarily quit working for the employer on April 16, 2024, by operation of the undisturbed conclusion in decision # 120807, claimant cannot collaterally attack that conclusion in this separate proceeding.

Nevertheless, as the order under review correctly concluded, the record does not show that claimant made a false statement willfully to obtain benefits. The record shows that claimant genuinely believed that he remained in an employment relationship with the employer at the time he filed his April 23, 2024, initial claim. Although decision # 120807’s conclusion that claimant quit working on April 16, 2024, is binding, there is ample evidence in the record to support a reasonable belief on claimant’s part

that he was still working for the employer as of April 23, 2024. *See* Exhibit 3 at 3-13. Thus, this is not a case of willful misrepresentation or fraud, and the one-year limitation on amending decisions under ORS 657.267(4) applies. Because the May 4, 2022, administrative decision was issued more than one year after the last decision allowing payment on August 24, 2020, the Department was not permitted to amend the original decisions allowing payment of benefits for weeks 17-20 through 34-20 with decisions assessing overpayments for those weeks.

Claimant therefore is not liable to repay the overpayments of \$2,718 in regular UI benefits, \$8,400 in FPUC benefits, or \$1,200 in LWA benefits that claimant received for the weeks at issue. Claimant also is not liable for a monetary penalty or penalty weeks.

DECISION: Order No. 24-UI-264485 is modified, as outlined above.

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

DATE of Service: October 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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