

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0502

Reversed and Remanded

PROCEDURAL HISTORY: On August 28, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits from March 15, 2024 through May 10, 2025; and that, as a result, claimant received benefits to which she was not entitled, assessing an overpayment of \$10,095 that she was required to repay to the Department (decision # L0005862508). Claimant filed a timely request for hearing. On August 14, 2025, ALJ Enyinnaya conducted a hearing, and on August 15, 2025, issued Order No. 25-UI-300722, modifying decision # L0005862508 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective March 10, 2025 and until requalified, and that claimant was overpaid \$10,095 in benefits that she was required to repay. On August 18, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-300722 concluding that claimant voluntarily quit work without good cause. That part of Order No. 25-UI-300722 is **adopted**. See ORS 657.275(2). The rest of this decision addresses the overpayment of benefits.

FINDINGS OF FACT: (1) Fred Meyer Stores, Inc. employed claimant as a department lead from January 20, 2016 through March 18, 2024. Claimant was suspended from work on March 10, 2024. On March 14, 2024, claimant was informed by telephone that the suspension had ended and that she was expected to return to work. Claimant refused to return to work, and on March 15, 2024, emailed the employer notice of her resignation with immediate effect.

(2) On May 12, 2024, claimant filed an initial claim for unemployment insurance benefits. The claim was determined to be monetarily valid with a weekly benefit amount (WBA) of \$673 and an expiration date of May 10, 2025. Four times claimant's WBA was \$2,692. Because the chain of events leading to the work separation began with what claimant felt was an undeserved suspension from work, she did not consider the separation to be a voluntary leaving. Claimant did not understand how to properly characterize the separation in her initial claim, and mistakenly reported it as a layoff due to lack of work.

(3) Claimant claimed benefits for the weeks including May 12, 2024 through August 24, 2024 (weeks 20-24 through 34-24). These are the weeks at issue. Claimant was paid \$673 in benefits for each of the weeks at issue, totaling \$10,095. The Department would not have paid claimant benefits for the weeks at issue if she had reported in her initial claim that she had voluntarily quit work, rather than that she had been laid off due to lack of work.

(4) On August 28, 2024, the Department issued decision # L0005862508, concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits, and that she had been overpaid the benefits she received for the weeks at issue and was required to repay them. In addition to the weeks at issue, claimant claimed benefits for several weeks after week 34-24, but was not paid benefits for those weeks due to the disqualification imposed by decision # L0005862508.

(5) The Department's records show that employers other than Fred Meyer Stores, Inc. reported that they paid claimant wages earned in subject employment during the first and second quarters of 2024, including \$3,308.62 during the second quarter of 2024 (March 31, 2024 through June 29, 2024).¹

(6) The Department waived recovery of the overpayment assessed in decision # L0005862508.

CONCLUSIONS AND REASONS: Order No. 25-UI-300722 is reversed, and the matter remanded for further development of the record regarding the overpayment of benefits.

A claimant who was overpaid benefits because the claimant, regardless of their knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, must repay the benefits or have the benefit amount deducted from future benefits otherwise payable to them. An overpayment may only be deducted from any future benefits the claimant is eligible to receive within the five years after the decision concluding there was an overpayment becomes final. ORS 657.310(1)(a). When the Department has paid a claimant benefits, it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

ORS 657.176 provides, in relevant part:

* * *

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 EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

(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[.]

* * *

* * *

ORS 657.155(1)(d) provides: "An unemployed individual shall be eligible to receive benefits with respect to any week only if the Director of the Employment Department finds that. . .[t]he individual has been unemployed for a waiting period of one week, unless the Governor has waived the required waiting period as provided in ORS 401.186."

The order under review concluded that claimant quit work without good cause on March 15, 2024, and was therefore disqualified from receiving benefits effective March 10, 2024, and until the disqualification ended by claimant earning four times her WBA in subsequent subject employment. Order No. 25-UI-300722 at 4. As previously stated, EAB's decision adopts this conclusion. The order under review also implicitly concluded that claimant remained disqualified from receiving benefits during each of the weeks at issue and was therefore overpaid \$10,095 in benefits that she was required to repay. Order No. 25-UI-300722 at 4. The record does not support this conclusion, and further development of the record is needed to determine whether claimant remained disqualified, and was thus overpaid, during each of the weeks at issue.²

Claimant was disqualified from receiving benefits effective March 10, 2024 based on the work separation. However, to determine whether claimant was properly denied benefits, and was therefore overpaid, for any specific benefit week following the effective week of the disqualification, it must be determined whether claimant remained disqualified during that week. To end a disqualification, a claimant must earn four times their weekly benefit amount in subject employment. ORS 657.176(2). Four times claimant's WBA is \$2,692. The Department's records suggest that claimant may have earned at least this amount from other employers after the week of the separation and before or during the weeks at issue.

On remand, inquiry should be made of the Department's representative as to whether quarterly earnings reports, wage audits, information provided by claimant in her weekly claims, or any other source shows that claimant was paid subject wages in any week after week 20-24 (March 10, 2024 through March 16,

² Even if the order on remand concludes that claimant was overpaid benefits for some or all of the weeks at issue, the previously issued waiver of recovery remains in effect, and the Department may not attempt to recover the overpayment. If the order following the remand hearing concludes that claimant's disqualification ended prior to the May 10, 2025 expiration of her claim, claimant may be owed additional benefits for weeks previously denied due to the disqualification, though claimant's entitlement to benefits after the weeks at issue is beyond the scope of this appeal.

2024) and, if so, the amount of those weekly wages. Inquiry should also be made of claimant as to her earnings from other employers for each week after March 16, 2024, and claimant should submit to the Office of Administrative Hearings (OAH) any documentary evidence of such earnings she would like considered, such as paystubs, before the remand hearing.

Furthermore, if the evidence on remand shows that claimant's earnings ended the disqualification period before or during one of the weeks at issue, additional inquiry should be made to determine if claimant should be denied benefits for that week or any subsequent week at issue on any other basis. For example, the Department's records suggest that claimant did not serve a waiting week as required by ORS 657.155(1)(d), perhaps due to Department error, and may have been overpaid benefits on that basis. It is also unclear whether claimant accurately reported earnings during the weeks at issue on her weekly claims, or if any unreported earnings affected the benefit amount to which she may have been entitled.

The order under review correctly concluded that if claimant was overpaid for any of the weeks at issue, it was due to claimant's unintentional mischaracterization of the work separation as a layoff, and recovery of the overpayment is therefore governed by ORS 657.310. Order No. 25-UI-300722 at 4. However, as previously stated, recovery of any overpayment has already been waived, and that waiver remains in effect regardless of the outcome of this appeal.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant's disqualification from benefits ended before or during the weeks at issue and whether claimant was overpaid for each of the weeks at issue, Order No. 25-UI-300722 is reversed and this matter remanded to OAH for another hearing and order.

DECISION: Order No. 25-UI-300722 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 23, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-30072 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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 stated above**. *See* ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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>. If you are unable to complete the survey online and wish to have 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 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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