

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0122**

*Affirmed*

*Request for Waiver Denied*

*Renuncia a la obligación de reembolsar el pago en exceso*

**PROCEDURAL HISTORY:** On August 29, 2011, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of August 19, 2010 through August 20, 2011 (decision # 160819). Claimant filed a timely request for hearing. On October 5, 2011, ALJ Shoemake conducted a hearing, and on October 6, 2011 issued Hearing Decision 13-UIB-02386, affirming the Department's decision and concluding claimant was not available for work during the weeks of August 1, 2010 through August 27, 2011. On October 26, 2011, Hearing Decision 13-UIB-02836 became final without an application for review having been filed with the Employment Appeals Board (EAB). On April 13, 2012, the Department issued an administrative decision concluding claimant was overpaid \$17,115 in Emergency Unemployment Compensation (EUC) and Federal Additional Compensation (FAC) benefits based on decision # 160819 and Hearing Decision 13-UIB-02836. Claimant did not file a request for a hearing on the decision establishing the amount of the overpayment, and it became final on May 3, 2012. On April 23, 2012, claimant filed a request for waiver of the overpayment. On April 27, 2012, the Department served notice of an administrative decision denying claimant's waiver request (decision # 102150). Claimant did not file a request for hearing on decision # 102150 and it became final on May 17, 2012. On August 19, 2013 claimant filed another request for a waiver of the \$17,115 overpayment. On August 22, 2013, the Department served notice of an administrative decision identical to decision #102150, denying claimant's waiver request (decision # 121016). Claimant filed a timely request for hearing on decision #121016. On November 6, 2013, the Department served notice of an amended administrative decision cancelling and vacating decision # 121016 on the ground that it duplicated decision # 102150 and was issued in error and without jurisdiction. The amended decision concluded that decision # 102150 remained in full force and effect. Notwithstanding the Department's November 6, 2013

amended decision, the Office of Administrative Hearings (OAH) scheduled a hearing on decision # 102150. On December 17, 2013, ALJ Wyatt conducted this hearing, and on January 16, 2013 issued Hearing Decision 14-UI-08648, affirming decision # 102150. On January 22, 2014, claimant filed an application for review with EAB.

**FINDINGS OF FACT:** (1) Claimant claimed and received benefits during the weeks of August 1, 2010 through July 30, 2011 (weeks 31-10 through 30-11). During these weeks, claimant was overpaid \$17,115 in EUC and FAC benefits.

(2) At the time of the hearing on claimant's request for a waiver, claimant was working 15 hours per week as a receptionist and earning \$9.18 per hour, for total earnings of \$137.70 per week and approximately \$551 per month. At the time of the hearing, claimant was also working at a school 15.5 hours per week and earning \$10.18 per hour, for total earnings of \$157.79 per week and approximately \$631 per month. At the time of the hearing, claimant was also receiving \$771 per month in Social Security benefits due to her husband's death in 2012. Claimant's total monthly household income was approximately \$1,953.

(3) At the time of the hearing on claimant's request for a waiver, claimant was sharing housing with her sister. Her total monthly expenses were: \$100 to pay the electric utility bill; \$100 to pay her sister for rent; \$100 to reimburse her sister for food purchases; \$127 per month for automobile insurance; no expenses for health insurance premiums because claimant was joining the Oregon Health Plan effective January 1, 2014; \$120 in gasoline expenses; a car payment of \$235; \$30 for claimant's phone; a \$100 payment on a miscellaneous debt; and \$4 in prescription expenses. Claimant's total household expenses were \$916.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant's request for a waiver of her repayment should be denied. However, our reasoning is different from theirs.

Claimant sought a waiver from repayment of \$17,115 in overpaid EUC and FAC benefits which it was determined she owed to the Department in its April 13, 2012 administrative decision. Under Public Law 110-252, §4005(b), an individual who was overpaid EUC or FAC benefits is liable to repay those benefits to the appropriate state agency administering state unemployment benefits. A state agency may waive collection of any overpaid EUC and FAC benefits if it determines that the overpayment was made without fault on the part of the individual and requiring repayment from the individual would be "contrary to equity and good conscience." Public Law 110-252, §4005(b)(1) and (2).

Claimant did not seek review of Hearing Decision 11-UIB-23836, which affirmed administrative decision # 160819 and concluded claimant was not available for work during the weeks at issue. Much of claimant's evidence at hearing directly challenged the findings in that decision in an effort to show that she was not at fault in causing the overpayment. *See* Transcript at 15-18. Although principles of finality preclude claimant from collaterally attacking that final hearing decision in this separate proceeding addressing only whether claimant's request for a waiver should be allowed, we will assume for purposes of this decision that she was overpaid the \$17,115 through no fault of her own. Given the decision we reach in this matter, we need not address whether claimant's proof at hearing conflicted with any findings essential to Hearing Decision 11-UIB-23836.

Even assuming claimant was not at fault in causing the overpayment, she still must also meet the “equity and good conscience” requirement before a waiver of repayment is authorized under Public Law 110-252, §4005(b)(1).. OAR 471-030-0053(2) states that it is “‘against equity and good conscience’ to recover overpaid amounts if the person requesting the waiver ‘has no means to repay the benefits’ and has ‘total allowable household expenses that equal or exceed 90 % of the total household income less unemployment benefits.’” “Allowable household expenses” are based on the Internal Revenue Service Collection Financial Standards. OAR 471-030-0053(2). The IRS standards set forth, by geographic region, the acceptable monthly amounts for the expenses it deems necessary for a household. *See* IRS Collection Financial Standards at <http://www.irs.gov/Individuals/Collection-FinancialStandards>. To the extent that claimant’s actual expenses differ from the IRS standards, whichever is the lesser amount will be used to calculate her total allowable monthly expenses.

Claimant testified that her monthly gross income at the time of hearing was approximately \$1,953. Assuming that all her income was subject to federal taxation, her gross income would be reduced by \$227 to account for federal income taxes,<sup>1</sup> \$121 to account for FICA taxes<sup>2</sup> and \$28.31<sup>3</sup> to account for Medicare taxes. Assuming that all of claimant’s income was subject to state income taxation, her gross income would be further reduced by \$136.<sup>4</sup> After the imposition of state and federal tax burdens, claimant’s disposable income would be \$1,440. To authorize a waiver, claimant’s total allowable household expenses must equal or exceed 90 percent of \$1,440, or \$1,296.

Claimant was questioned extensively about her monthly household expenses and she testified only to expenses totaling \$916.<sup>5</sup> *See* Transcript at 19, 20, 21. Although the monthly food expense that claimant identified was only \$100, and the IRS standard amount for a single person living in claimant’s geographic region is \$315, even adding \$215 to her expenses yields \$1,131 in total monthly expenses, which is \$165 less than 90 percent of her income. *See* IRS Collection Financial Standards at <http://www.irs.gov/Businesses/SmallBusiness-&-SelfEmployed/National-Standards-Food-Clothing-and-OtherItems>. Because claimant’s total allowable monthly household expenses did not equal or exceed 90 percent of her total monthly household income, repayment of the overpayment is not “contrary to equity and good conscience.” Claimant’s request for a waiver of her overpayment is, therefore, denied.

**DECISION:** Hearing Decision 14-UI-08648 is affirmed.  
*Decisión de la Audiencia 14-UI-08648 queda confirmada.*

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<sup>1</sup> *See* IRS 2014 Publication 15, Employer’s Tax Guide at 42 (\$1,953 less \$75.60 less \$151.35= \$227). We have assumed for purposes of this calculation that claimant was paid on a monthly basis.

<sup>2</sup> *See* IRS 2014 Publication 15, Employer’s Tax Guide at 23 (6.2% of \$1,953=\$121). Although it is of doubtful accuracy since they are not earned income, we have assumed for purposes of this calculation that claimant’s Social Security benefits were also subject to FICA taxes.

<sup>3</sup> *See* IRS 2014 Publication 15, Employer’s Tax Guide at 23 (1.45% of \$1,953=\$28.31). As in note 2, we have assumed for purposes of this calculation that all of claimant’s income was subject to Medicare taxes, including the Social Security benefits she received.

<sup>4</sup> *See* Oregon Department of Revenue, Oregon Withholding Tax Tables Effective January 1, 2014 at 4 (state taxes to be withheld on income of \$1,953 is \$136).

<sup>5</sup> We have eliminated from claimant’s household expenses the \$30 per month expense of paying for her adult son’s cell phone since he is not a dependent of claimant and does not appear to live in her household. *See* Transcript at 18, 21.

Tony Corcoran and D. E. Larson;  
Susan Rossiter, not participating.

**DATE of Service: February 25, 2014**

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.

***NOTA:** Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante el Tribunal de Apelaciones de Oregon dentro de los 30 días siguientes a la fecha de notificación enumerados anteriormente. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la (Oregon Court of Appeals, Records Section) Corte de Apelaciones de Oregon, Sección de Registros, 1163 State Street, Salem, Oregon 97310, o visitando el sitio en el Internet en <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.*

*Nota: el vínculo anterior puede no funcionar debido a cambios sin previo aviso al sitio en el Internet de la Corte de Apelaciones, dándose el caso puede ponerse en contacto con el Registro de Apelaciones (Appellate Records) al (503) 986-5555.*