

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0180**

*Modified*

*Late Request for Hearing Allowed*

*Overpayment Assessed Subject to Collection by Deduction Only and Waiver under the CARES Act*

**PROCEDURAL HISTORY:** On October 21, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant received \$9,763 in Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC) benefits to which claimant was not entitled and was required to repay because during the weeks claimed, claimant was eligible for other unemployment benefits (decision # 144936). On November 10, 2020, decision # 144936 became final without claimant having filed a request for hearing. On November 23, 2020, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's hearing request, and on December 28, 2020 issued Order No. 20-UI-158242, dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 11, 2021.

On January 4, 2021, claimant filed a timely response to the appellant questionnaire. On January 12, 2021, the Office of Administrative Hearings (OAH) mailed claimant a letter stating that Order No. 20-UI-158242 was cancelled and that a hearing would be scheduled to address whether claimant's late request for hearing should be allowed and, if appropriate, the merits of decision # 144936. On February 17, 2021, OAH mailed notice of a hearing scheduled for March 2, 2021. On March 2, 2021, ALJ Monroe conducted a hearing, and on March 10, 2021 issued Order No. 21-UI-162494, allowing claimant's late request for hearing and modifying decision # 144936 by concluding the Department overpaid claimant \$1,963 in regular benefits that claimant was liable to have deducted from future benefits otherwise payable to her under ORS 657.315, and overpaid claimant \$7,800 in FPUC benefits that claimant was liable to have deducted from future benefits otherwise payable to her under applicable federal law and ORS 657.315. On March 12, 2021, claimant filed a timely application for review of Order No. 21-UI-162494 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the hearing record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing on decision # 144936 is **adopted**.

The remainder of this decision addresses the portions of the order under review concluding that the Department overpaid claimant \$1,963 in regular benefits that claimant is liable to pay under ORS 657.315, and \$7,800 in FPUC benefits that claimant is liable to repay under applicable federal law and ORS 657.315.

**FINDINGS OF FACT:** (1) On September 20, 2019, claimant filed an initial claim for regular unemployment insurance benefits (BYE 37-20). The Department established claimant's weekly benefit amount at \$151.

(2) Claimant exhausted her rights to regular unemployment benefits under claim BYE 37-20 as of the week ending February 15, 2020 (week 07-20). When claimant claimed benefits for the weeks from March 29, 2020 through June 27, 2020 (weeks 14-20 through 26-20), the weeks at issue, the Department determined that claimant was eligible to receive PEUC benefits equal to her regular benefit amount of \$151, and that her eligibility for those benefits made her eligible for FPUC benefits in the amount of \$600. For each of the weeks at issue, the Department paid claimant \$151 in PEUC benefits and \$600 in FPUC benefits.

(3) The Department subsequently determined that through no fault of claimant, the Department erred and should not have paid claimant the total of \$1,963 in PEUC benefits and \$7,800 in FPUC benefits it paid her for the weeks at issue. It determined that during those weeks, she was eligible to file a "combined wage claim" for regular benefits in another state, which she had not done, which made her ineligible for the PEUC and FPUC benefits she received. Transcript at 16-19.

**CONCLUSIONS AND REASONS:** Claimant received \$1,963 in PEUC benefits and \$7,800 in FPUC benefits to which she was not entitled, but is liable only to have the total overpayment of \$9,763 deducted from future benefits otherwise payable to her.

**Eligibility for PEUC and FPUC Benefits.** Under the CARES Act<sup>1</sup>, any state that enters into a federal-state agreement to administer benefits under the act will make payments of PEUC benefits to individuals who have exhausted all rights to regular compensation benefits under that state's law or federal law, provided the individual has no right to regular compensation benefits under the law of any other state.<sup>2</sup> In addition, if any state that has entered into such an agreement is making payments to individuals of regular compensation benefits, or other benefits as described in the Act, including PEUC benefits, the amount of the regular compensation benefit payable for any week shall be equal to the regular compensation amount plus an additional amount of \$600 in FPUC benefits.<sup>3</sup>

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<sup>1</sup> Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pub. L. 116-136.

<sup>2</sup> Pub. L. 116-136, § 2107(a)(2). Under the CARES Act, states are permitted to extend regular unemployment benefits by up to 13 weeks under the Pandemic Emergency Unemployment Compensation (PEUC) program. PEUC benefits are available for weeks of unemployment beginning after the state implements the program and ending with weeks of unemployment ending on or before December 31, 2020. <https://www.dol.gov/coronavirus/unemployment-insurance>.

<sup>3</sup> Pub. L. 116-136, § 2104(b)(1) and (i)(2).

The Department initially determined that claimant was eligible for PEUC benefits for the weeks at issue because she had exhausted her rights to regular compensation benefits under claim BYE 37-20. Transcript at 23. Based on that determination, the Department also determined that claimant was eligible for supplemental FPUC benefits for the weeks at issue. Based on those conclusions, the Department paid claimant \$1,963 in PEUC benefits and \$7,800 in FPUC benefits for those weeks. However, after those benefits were paid, the Department determined that claimant had been eligible to file a claim for regular unemployment benefits for the weeks at issue in at least one other state, which had not been done. Transcript at 18-19. The Department considered the error “administratively caused” because when the Department granted claimant the PEUC extension beginning with week 14-20, it failed to verify whether she had other valid claim options against another state. Transcript at 17, 19. The Department ultimately concluded claimant had received an overpayment of \$1,963 in PEUC benefits and \$7,800 in FPUC benefits and issued decision # 144936. The record supports that conclusion for the reasons the Department’s witness described.

**Repayment of PEUC Benefits.** Claimant was overpaid \$1,963 in PEUC benefits because she did not qualify for PEUC benefits under the CARES Act, as explained above. An individual who receives PEUC payments to which the individual was not entitled must repay those benefits, unless the Department waives such repayment as provided under the CARES Act if it determines that payment of those benefits was without fault on the part of the individual, and such repayment would be contrary to equity and good conscience.<sup>4</sup> The record does not show that the Department has waived repayment here. The CARES Act also provides, in relevant part, “The [Department] shall recover the amount to be repaid, or any part thereof, by deductions from any [PEUC or other state administered unemployment compensation benefits] payable to such individual . . . during the 3-year period after the date such individuals received the payment of the [PEUC benefits] to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.”<sup>5</sup>

Order No. 21-UI-162494 found that for each of the weeks at issue, the Department overpaid claimant “regular” unemployment insurance benefits in the amount of \$151 and concluded that the total overpayment of \$1,963 in regular benefits was “properly analyzed under ORS 657.315.” Order No. 21-UI-162494 at 2, 5. It further concluded that because the overpayment was not caused by claimant’s misrepresentation or omission of a material fact, it was subject to deduction from future regular benefits payable to claimant for the five-year period specified in ORS 657.315. Order No. 21-UI-162494 at 5. However, the record shows that claimant was overpaid \$1,963 in PEUC benefits subject to deduction from future benefits otherwise payable under the CARES Act, and not regular benefits subject to deduction under ORS 657.315.

When asked at hearing whether “the \$151.00 per week” the Department paid to claimant “was PEUC,” the Department’s witness responded, “That is correct.” Transcript at 16. For that reason, claimant’s repayment of the total amount of \$1,963 in PEUC benefits she received is subject to the waiver and three-year offset provisions of the CARES Act which authorized them, rather than five-year offset provisions of ORS 657.315 which governs the offset of regular benefits only.

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<sup>4</sup> Pub. L. 116-136, § 2107(e)(2)

<sup>5</sup> Pub. L. 116-136, § 2104(e)(3).

Claimant's liability for repayment of the \$1,963 in PEUC benefits she was overpaid is limited to deduction from any future PEUC or other state administered unemployment compensation benefits to which she may become entitled. Claimant's liability for repayment of the \$1,963 in PEUC benefits she was overpaid is also subject to the waiver provisions of the CARES Act under Pub. L. 116-136, § 2107(e)(2).

**Repayment of FPUC Benefits.** Claimant received \$7,800 in FPUC benefits to which she was not entitled because she did not qualify for PEUC benefits under the CARES Act, as explained above. An individual who receives FPUC payments to which the individual was not entitled must repay those benefits, unless the Department waives such repayment as provided under the CARES Act if it determines that payment of those benefits was without fault on the part of the individual, and such repayment would be contrary to equity and good conscience.<sup>6</sup> The record does not show that the Department has waived repayment of the overpayment of FPUC benefits here. The CARES Act also provides, in relevant part, "The [Department] shall recover the amount to be repaid, or any part thereof, by deductions from any [FPUC or other state administered unemployment compensation benefits] payable to such individual . . . during the 3-year period after the date such individuals received the payment of the [FPUC benefits] to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State."<sup>7</sup> Therefore, claimant's liability for repayment of the \$7,800 in FPUC benefits is limited to deduction from any future FPUC or other benefits to which claimant is otherwise entitled. Claimant's liability for repayment of the \$7,800 in FPUC benefits she was overpaid is also subject to the waiver provisions of the CARES Act under Pub. L. 116-136, § 2104(f)(2).

In sum, claimant is liable for an overpayment of \$1,963 in PEUC benefits and \$7,800 in FPUC benefits to be deducted from future benefits only in accordance with Pub. L. 116-136, § 2107(e)(3) and § 2104(f)(3), unless otherwise waived by the Department in accordance with Pub. L. 116-136, § 2107(e)(2) and § 2104(f)(2).

**DECISION:** Order No. 21-UI-162494 is modified, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service:** April 19, 2021

**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](http://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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<sup>6</sup> Pub. L. 116-136, § 2104(f)(2).

<sup>7</sup> Pub. L. 116-136, § 2104(f)(3).

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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.

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