

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0421**

*Affirmed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On April 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an overpayment of \$3,365 in Pandemic Unemployment Assistance (PUA) benefits and \$1,800 of Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay to the Department (decision # 105447). Claimant filed a timely request for hearing. On May 10, 2021, ALJ Murdock conducted a hearing, and on May 12, 2021 issued Order No. 21-UI-166643, affirming decision # 105447. On May 27, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) On March 24, 2020, claimant filed an initial claim for regular unemployment insurance (Regular UI) benefits. The base year for the claim was October 2018 through Sept 2019. The Department determined claimant's Regular UI claim was monetarily nonvalid because claimant did not have sufficient wages in subject employment in her base year.

(2) On April 28, 2020, claimant filed an initial claim for PUA benefits. The Department established a weekly PUA benefit amount of \$610. Claimant claimed PUA benefits for the weeks of March 22, 2020 through May 9, 2020 (weeks 13-20 through 19-20). These are the weeks at issue.

(3) The Department paid claimant \$610 of PUA benefits for each of the weeks at issue. The Department also paid claimant \$600 of FPUC benefits for all of the weeks at issue except week 13-20.<sup>1</sup>

<sup>1</sup> The Department did not pay claimant FPUC benefits for week 13-20 because, under federal law, the first week FPUC benefits were payable was week 14-20.

(4) In July 2020, the Department completed a redetermination of claimant's claim for Regular UI benefits. The Department determined that some of claimant's earnings that it had initially regarded as independent contractor earnings were wages from subject employment. The Department determined that those wages, in combination with other wages reported, were sufficient to establish a valid claim for Regular UI with a weekly benefit amount of \$151.<sup>2</sup>

(5) Because claimant had a valid claim for Regular UI, the Department determined claimant was ineligible for PUA<sup>3</sup>, and that she was not entitled to the PUA and FPUC benefits previously paid to her for the weeks at issue.

(6) The Department construed claimant as having claimed Regular UI benefits for the weeks at issue. Rather than pay claimant the full amount of her Regular UI benefits and FPUC benefits for the weeks at issue, the Department used portions of those benefits to offset some of the PUA and FPUC benefits claimant was overpaid. Specifically, the Department applied the full \$151 of Regular UI benefits for each of the weeks of 13-20 through 17-20 against claimant's \$610 of PUA benefits for each of those weeks, resulting in a remaining PUA overpayment for those weeks of \$2,295  $(\$610 - \$151) \times 5 \text{ weeks} = \$2,295$ ). The Department applied \$75 of claimant's Regular UI Benefits for each of the weeks of 18-20 and 19-20 against claimant's \$610 of PUA benefits for those weeks, resulting in a remaining PUA overpayment for those weeks of \$1,070  $(\$610 - \$75) \times 2 \text{ weeks} = \$1,070$ ). Combined, claimant's remaining PUA overpayment for the weeks at issue was \$3,365.

(7) The Department applied \$300 of the FPUC benefits claimant received in connection with her Regular UI claim for each of the weeks of 14-20 through 19-20 against the \$600 of FPUC benefits claimant had already received for those weeks, resulting in a remaining FPUC overpayment for the weeks at issue of \$1,800  $(\$600 - \$300) \times 6 \text{ weeks} = \$1,800$ ).

(8) The Department made no determination that claimant committed fraud or acted inappropriately in connection with the overpayments of PUA and FPUC benefits.

**CONCLUSIONS AND REASONS:** Claimant received \$3,365 in PUA benefits and \$1,800 in FPUC benefits to which she was not entitled. Claimant is liable for an overpayment of \$3,365 in PUA benefits to be deducted from future benefits otherwise payable. Claimant is also liable for an overpayment of \$1,800 in FPUC benefits to be deducted from future regular or FPUC payments to which claimant is otherwise entitled.

**Overpayment of PUA Benefits.** Section 2102(d)(4) of the CARES Act, Pub. L. 116-136, as amended by Section 201(d) of the Continued Assistance Act, provides that “[i]n the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic unemployment assistance to the State agency, except that the State agency may waive such repayment if it determines that (A) the payment of

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<sup>2</sup> Claimant did not appeal the Wage and Potential Benefit Report issued to claimant in connection with the Department's redetermination.

<sup>3</sup> To be eligible to receive PUA benefits, an individual must be a “covered individual” as defined by the CARES Act, which requires, among other things, that the individual “is not eligible for regular compensation . . . under state or federal law[.]” Pub. L. 116-136, § 2102(a)(3)(A)(i).

such pandemic unemployment assistance was without fault on the part of any such individual; and (B) such repayment would be contrary to equity and good conscience.” Under guidance issued by the United States Department of Labor, “if the overpayment amount is not subject to waiver, the State agency must recover the amount of PUA to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [unemployment insurance] paid by the State.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) (UIPL 16-20, Change 4), at I-26.

With respect to the procedures that apply to recovery of overpayments of Regular UI, ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual’s false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

The record does not show that the Department has waived repayment of the PUA benefits claimant was overpaid. Accordingly, pursuant to UIPL 16-20, Change 4, recovery of the PUA benefits claimant was overpaid is governed by ORS 657.315.

During the weeks at issue, claimant was ineligible to receive PUA benefits because she was eligible for Regular UI. Claimant erroneously received PUA benefits for those weeks because the Department failed initially to regard certain of claimant’s earnings as wages from subject employment, and as a result, deemed claimant ineligible for Regular UI, which enabled her to receive PUA benefits to which she was not entitled. Because the Department overpaid claimant due to agency error or because an initial decision to pay PUA benefits was subsequently reversed (rather than because claimant made a false statement, misrepresentation, or failed to disclose a material fact), claimant is not liable to repay the benefits. However, claimant is liable to have the \$3,365 she received in PUA benefits during the weeks at issue deducted from any future benefits otherwise payable to her.

**Overpayment of FPUC Benefits.** Under the provisions of Section 2104 of the CARES Act, Pub. L. 116-136, claimant also received \$1,800 in FPUC benefits to which she was not entitled because she did not qualify for PUA benefits. Pursuant to Section 2104(f)(2) of the CARES Act, an individual who receives FPUC payments to which the individual was not entitled is liable to repay those benefits, unless the Department waives such repayment because it determines that the payment of those benefits was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. The record does not show that the Department has waived repayment here. Therefore, claimant is liable for the overpayment of \$1,800 in FPUC benefits she received during the weeks at issue. Under § 2104(f)(3), the Department may recover the FPUC benefits by deduction from any future regular or FPUC payments to which claimant is otherwise entitled.

**DECISION:** Order No. 21-UI-166643 is affirmed.

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

**DATE of Service: July 2, 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](https://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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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