

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0445**

*Affirmed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On April 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was paid unemployment insurance benefits to which she was not entitled and assessing an overpayment of \$14,196 in regular benefits (regular UI), \$7,644 in Pandemic Emergency Unemployment Compensation benefits (PEUC), and \$10,500 in Federal Pandemic Unemployment Compensation benefits (FPUC) (decision # 124033). Claimant filed a timely request for hearing. On May 13, 2021, ALJ Monroe conducted a hearing, and on May 18, 2021 issued Order No. 21-UI-167036, affirming decision # 124033. On June 15, 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) Beginning in 2017 and continuing throughout the time relevant to this decision, claimant worked as a store operations manager for Safeway. During that time, claimant was also self-employed as a childcare provider until approximately March 2020 when she ceased providing childcare services due to the onset of the COVID-19 pandemic.

(2) Although claimant continued working for Safeway following the onset of the COVID-19 pandemic, she believed she could receive Pandemic Unemployment Assistance (PUA) benefits for the weeks the pandemic caused her to stop carrying on her self-employment venture. On November 12, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed PUA benefits for the weeks including March 29, 2020 through January 2, 2021 (weeks 14-20 through 53-20). These are the weeks at issue.

(3) Claimant submitted a PUA weekly certification form for each of the weeks at issue. For each week, claimant answered "no" to the question: "If you were not self-employed, did you do other work during the week claimed?" Claimant answered "no" to the question because she "was only answering the

questions in reference to like [her] self employment” and “wasn’t understanding, I guess, that it was for any job.” Transcript at 27, 25. Claimant also did not report the hours she worked or the gross amount she earned from Safeway in her weekly certification forms because she believed the certification questions related only to her self-employment and not her job at Safeway.

(4) On January 8, 2021, claimant contacted the Department to inquire on the status of her PUA claim. Following the call, the Department determined that claimant was ineligible for PUA benefits because she was eligible for regular UI.<sup>1</sup> The Department converted claimant’s PUA claim into a claim for regular UI benefits and determined that claimant’s weekly benefit amount was \$546. The Department “roll[ed] . . . over” the weekly certifications claimant had submitted for each of the weeks at issue under her PUA claim to her regular UI claim. Transcript at 9.

(5) Shortly after claimant’s January 8, 2021 call with the Department, claimant submitted proof of her Safeway earnings to the Department.

(6) Based upon the information from claimant’s weekly certifications, the Department paid claimant \$546 in Regular UI benefits for each of the weeks including the weeks of March 29, 2020 through September 26, 2020 (weeks 14-20 through 39-20), and upon exhaustion of claimant’s Regular UI benefits with week 39-20, paid claimant \$546 in PEUC benefits for each of the weeks including the weeks of September 27, 2020 through January 2, 2021 (weeks 40-20 through 53-20). The Department also paid claimant \$600 in FPUC benefits for each of the weeks including the weeks of March 29, 2020 through July 25, 2020 (weeks 14-20 through 30-20), and \$300 in FPUC benefits for the week of December 27, 2020 through January 2, 2021 (week 53-20).

(7) After claimant received benefits, the Department determined that claimant’s weekly earnings from Safeway for each of the weeks at issue exceeded her weekly benefit amount of \$546 for each of those weeks.

**CONCLUSIONS AND REASONS:** Claimant received \$14,196 in Regular UI benefits, \$7,644 in PEUC benefits, and \$10,500 in FPUC benefits to which she was not entitled. Claimant is liable to either repay the \$14,196 in Regular UI benefits or have that amount deducted from any future benefits otherwise payable to claimant. Claimant is liable for an overpayment of \$7,644 in PEUC benefits to be deducted from future PEUC payments to which claimant is otherwise entitled or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department. Claimant is also liable for an overpayment of \$10,500 in FPUC benefits to be deducted from future FPUC payments to which claimant is otherwise entitled or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department.

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<sup>1</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).

**Remuneration and overpayment.** Only unemployed individuals are eligible to receive benefits in any week. *See* ORS 657.155(1). An individual is deemed “unemployed” in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount. ORS 657.100(1).

At hearing, claimant did not dispute the Department’s determination that her earnings from services performed for Safeway for each of the weeks at issue exceeded her weekly benefit amount of \$546. Transcript at 19. The record therefore shows that claimant earned more than her weekly benefit during each of the weeks at issue. Thus, claimant was not “unemployed” during the weeks at issue as that term is defined by ORS 657.100(1), and for that reason was not eligible for any of the benefits she received for each of those weeks. Claimant was therefore overpaid a combined total of \$32,340 in regular UI benefits, PEUC benefits, and FPUC benefits.

**Repayment of Regular UI benefits.** ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual’s knowledge or intent. *Id.*

Here, claimant received regular UI benefits to which she was not entitled because, for each of the weeks at issue, she failed to report on her weekly certifications that she performed work for Safeway and received earnings that exceeded her weekly benefit amount. The record shows that for each of the weeks at issue, claimant provided no earnings information relating to her work for Safeway and answered “no” to the question: “If you were not self-employed, did you do other work during the week claimed?” The record supports that for each week claimant answered “no” to this question, she was not self-employed because she had ceased her self-employment venture and did perform “other work” for Safeway that produced earnings that exceeded her weekly benefit amount. Had claimant accurately answered the question and provided her Safeway earnings information, she would not have received benefits. Therefore, claimant’s “no” answer and failure to provide earnings information constituted false statements or omissions of material fact that caused claimant to receive Regular UI benefits for each of the weeks at issue. While claimant may not have understood that the above question applied to claimant’s work for Safeway, ORS 657.310(1) specifically provides that its provisions are applicable regardless of the individual’s knowledge or intent.

As such, claimant made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of her knowledge or intent, regarding her work and earnings for the weeks at issue. Per ORS 657.310(1), claimant is liable to either repay the \$14,196 in Regular UI benefits she received or have that amount deducted from any future benefits otherwise payable to her under ORS chapter 657.

**Repayment of PEUC benefits.** Under the provisions of the CARES Act of 2020, Pub. L. 116-136, claimant also received \$7,644 in PEUC benefits to which she was not entitled because she did not qualify for benefits under state law as explained above. Pursuant to Pub. L. 116-136, § 2107(e)(2), an

individual who receives PEUC 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 the Department has waived repayment here. Therefore, claimant is liable for the overpayment of \$7,644 in PEUC benefits she received during the weeks at issue. Under Pub. L. 116-136, § 2107(e)(3), the Department may recover the PEUC benefits by deduction from any future PEUC payments payable to her or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department.

**Repayment of FPUC Benefits.** Under the provisions of the CARES Act, claimant also received \$10,500 in FPUC benefits to which she was not entitled because she did not qualify for benefits under state law as explained above. Pursuant to Pub. L. 116-136, § 2104(f)(2), 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 the Department has waived repayment here. Therefore, claimant is liable for the overpayment of \$10,500 in FPUC benefits she received during the weeks at issue. Under Pub. L. 116-136, § 2104(f)(3)(A), the Department may recover the FPUC benefits by deduction from any future FPUC payments payable to her or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department.

In sum, claimant is liable for an overpayment of \$14,196 in Regular UI benefits to be repaid or deducted from future benefits; for an overpayment of \$7,644 in PEUC benefits to be deducted from future benefits only; and for an overpayment of \$10,500 in FPUC benefits to be deducted from future benefits only.

**DECISION:** Order No. 21-UI-167036 is affirmed.

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

**DATE of Service:** July 14, 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.

**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>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.