

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0584**

*Order No. 22-UI-193827 ~ Affirmed – Late Request for Hearing Allowed, Overpayment Assessed*  
*Order No. 22-UI-193829 ~ Affirmed – Late Request for Hearing Allowed, Overpayment Assessed*  
*Order No. 22-UI-193830 ~ Modified – Waiver Granted as to Entire Regular UI Overpayment*

**PROCEDURAL HISTORY:** On October 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that, due to Department error, claimant was paid benefits to which he was not entitled and, following an internal adjustment, assessing an overpayment of \$2,926 in regular unemployment insurance (regular UI) benefits, and \$3,300 in Federal Pandemic Unemployment Compensation benefits (FPUC) (decision # 124629). On October 22, 2021, the Department served notice of an administrative decision concluding that, due to Department error, claimant was paid benefits to which he was not entitled and, following an internal adjustment, assessing an overpayment of \$80 in regular UI benefits, and \$300 in FPUC benefits (decision # 141904). On November 10, 2021, decision # 124629 became final without claimant having filed a request for hearing. On November 12, 2021, decision # 141904 became final without claimant having filed a request for hearing. On April 1, 2022, the Department served notice of an administrative decision, based in part on decisions # 124629 and 141904, denying claimant's request for a regular UI overpayment waiver because claimant did not establish that repayment was against equity and good conscience (decision # 112152).

On April 13, 2022, claimant filed late requests for hearing on decisions # 124629 and 141904, and a timely request for hearing on decision # 112152. On May 10, 2022, ALJ Lucas conducted a consolidated hearing on decisions # 124629 and 141904, and a separate hearing on decision # 112152. On May 16, 2022, ALJ Lucas issued Order No. 22-UI-193827 allowing claimant's late request for hearing and affirming decision # 124629, and Order No. 22-UI-193829 allowing claimant's late request for hearing and affirming decision # 141904. Also on May 16, 2022, ALJ Lucas issued Order No. 22-UI-193830 modifying decision # 112152 by concluding that claimant's overpayment waiver request should be granted as to the overpayments relating to the weeks including May 24, 2020 through July 25, 2020 (weeks 22-20 through 30-20), and August 2, 2020 through September 12, 2020 (weeks 32-20 through 37-20) but should be denied as to the overpayments relating to the weeks including September 13, 2020 through October 10, 2020 (weeks 38-20 through 41-20), December 13, 2020 through January 16, 2021 (weeks 51-20 through 02-21), and March 21, 2021 through April 3, 2021 (weeks 12-21 through 13-21).

On May 18, 2022, claimant filed applications for review of Orders No. 22-UI-193827, 22-UI-193829, and 22-UI-193830 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted a written argument on May 18, 2022, two on May 19, 2022, and another on May 26, 2022. Claimant's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him 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 arguments to the extent they were based on the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-193827, 22-UI-193829, and 22-UI-193830. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0582, 2022-EAB-0583, and 2022-EAB-0584).

**FINDINGS OF FACT:** (1) On June 3, 2020, claimant filed an initial claim for regular UI benefits. Claimant claimed and was paid regular UI and FPUC benefits for the weeks including May 24, 2020 through July 25, 2020 (weeks 22-20 through 30-20), August 2, 2020 through October 10, 2020 (weeks 32-20 through 41-20), and December 13, 2020 through January 16, 2021 (weeks 51-20 through 02-21). However, the Department determined that the claim needed to be canceled and re-filed to backdate the initial claim to March 1, 2020, the week claimant became unemployed. The Department did so, but making the claim effective March 1, 2020, changed the claim's base year and altered the mix of wages used to calculate claimant's weekly benefit amount, which resulted in the re-filed claim having a lower weekly benefit amount. The Department offset the benefits from the re-filed claim against the benefits claimant had already received, but the lower regular UI benefit amount from the re-filed claim did not fully offset the regular UI benefits claimant had already received, and federal law allowed the Department to use only 50% of the new FPUC benefits to offset FPUC benefits claimant had already received. After application of the offsets, the Department determined that they had overpaid claimant \$2,926 in regular UI benefits and \$3,300 in FPUC benefits. The overpayments were the result of the Department's error.

(2) On March 31, 2021, claimant filed a new initial claim for regular UI benefits. Claimant claimed and was paid regular UI and FPUC benefits for the weeks including March 21, 2021 through April 3, 2021 (weeks 12-21 through 13-21). However, the Department determined that rather than pay claimant regular UI benefits for those weeks on the claim filed March 31, 2021, it should have paid claimant for those weeks through a Pandemic Emergency Unemployment Compensation (PEUC) extension onto the previous initial claim effective March 1, 2020. As allowed by federal law, the Department offset 50% of the benefits from the PEUC extension against the regular UI benefits claimant had already received and 50% of the new FPUC benefits against the FPUC benefits claimant already received. After application of the offsets, the Department determined that they had overpaid claimant \$80 in regular UI benefits and \$300 in FPUC benefits. The overpayments were the result of the Department's error.

(3) In the spring and summer of 2021, the Department issued claimant a number of overpayment administrative decisions but then canceled them because of miscalculations, among other reasons. On October 7, 2021, the Department issued claimant another overpayment administrative decision, which is

not subject to this appeal, and in response to this overpayment decision, on October 14, 2021, claimant submitted an overpayment waiver request to the Department.

(4) On October 21, 2021, the Department issued decision # 124629 assessing an overpayment against claimant of \$2,926 in regular UI benefits and \$3,300 in FPUC benefits. On October 22, 2021, the Department issued decision # 141904 assessing an overpayment against claimant of \$80 in regular UI benefits and \$300 in FPUC benefits.

(5) Although decisions # 124629 and 141904 were issued after claimant's October 14, 2021 overpayment waiver request, the Department applied the October 14, 2021 waiver request to decisions # 124629 and 141904. The Department considered claimant's waiver request regarding his overpayment of federal benefits and granted claimant a waiver relating to the overpayments of \$3,300 and \$300 in FPUC benefits reflected in decisions # 124629 and 141904.

(6) The Department also considered claimant's waiver request relating to the overpayments of \$2,926 and \$80 of regular UI benefits reflected in decisions # 124629 and 141904. The Department conducted an analysis of claimant's monthly debt-to-income ratio. Claimant's only income was a Department of Veterans Affairs (V.A.) disability payment of \$3,548.61 per month. In analyzing claimant's monthly debt-to-income ratio, the Department reduced the \$3,548.61 V.A. disability payment by 25% to \$2,661.46, which reflected what the Department considered the net value of claimant's income after taxes. Ninety percent of \$2,661.46 is \$2,395.31.

(7) Claimant's monthly household expenses consisted of a \$1,415.47 mortgage payment, an \$82.15 utilities bill, a \$51.74 natural gas bill, a home and car insurance payment of \$105.39, clothing expenses of \$50, television and internet expenses of \$36, a garbage bill of \$57.34, and a telephone bill of \$67. Claimant also had a monthly car payment of \$552, to which the Department applied a maximum allowance of \$517 per month. Claimant's food expenses were \$720 per month, to which the Department applied a maximum allowance of \$400 per month for one person. When applying the maximum allowance for the car payment and food, claimant's total monthly household expenses amounted to \$2,782.09. Claimant's \$2,782.09 in total monthly household expenses exceeded 90% of his net monthly income, which was \$2,395.31.

(8) Claimant had no assets or other means to repay his regular UI overpayment.

(9) Although claimant's total monthly household expenses exceeded 90% of his net monthly income, the Department determined that recovery of claimant's regular UI overpayments of \$2,926 and \$80 reflected in decisions # 124629 and 141904 was not against equity and good conscience. On April 1, 2022, the Department issued decision # 112152 denying claimant's request for a regular UI overpayment waiver.

**CONCLUSIONS AND REASONS:** Orders No. 22-UI-193827 and 22-UI-193829, which allowed claimant's late requests for hearing and affirmed decisions # 124629 and 141904, are affirmed. Order No. 22-UI-193830 is modified. The Department is required to waive claimant's overpayments of \$2,926 and \$80 of regular UI benefits reflected in decisions # 124629 and 141904.

**Orders No. 22-UI-193827 and 22-UI-193829 – Late Requests for Hearing and Overpayments.**

Based on a *de novo* review of the entire record in these consolidated cases, and pursuant to ORS 657.275(2), Orders No. 22-UI-193827 and 22-UI-193829, are **adopted**.

**Order No. 22-UI-193830 – Regular UI Overpayment Waiver.** Under ORS 657.317(2)(a), the Department “may waive recovery of all or any part of overpaid benefits subject to repayment or deduction under ORS 657.310(1) or 657.315(1)” if the Department finds “that recovery of the benefits would be against equity and good conscience.” Recovering overpaid benefits is against equity and good conscience if the person requesting a 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.” OAR 471-030-0053(2) (effective January 11, 2018). The Department uses the IRS Collection Financial Standards to determine maximum allowable household expenses. OAR 471-030-0053(2).

Further, Oregon temporary rules address unemployment insurance provisions applicable to the unique situations arising from COVID-19. Temporary OAR 471-030-0070(6) (effective March 8, 2020 through September 12, 2020) states:

ORS 657.315(2) permits the waiver of overpayment recoveries if the overpayment was not caused in any way by the claimant and if recovery would be against equity and good conscience. Notwithstanding OAR 471-030-0053, for benefits paid for weeks starting with the week ending March 28, 2020, given the economic conditions created by the coronavirus and measures taken to mitigate its spread, it would be against equity and good conscience to recover these overpayments. Recovery efforts may be resumed after emergency declarations related to the coronavirus expire or otherwise are no longer in effect.

As a preliminary matter, Order No. 22-UI-193830 addressed whether claimant’s overpayment waiver request should have been granted both as to his overpayment of regular UI benefits, and as to his overpayment of FPUC benefits. *See* Order No. 22-UI-193830 at 4, 8, 9-10. The record reflects that decision # 112152 related exclusively to claimant’s regular UI overpayment and that prior to issuing decision # 112152, the Department had already waived the FPUC overpayments claimant was liable for under decisions # 124629 and 141904. Order No. 22-UI-193830 is therefore modified, in part, to the extent it addressed overpayment of FPUC benefits because this issue was beyond the scope of decision # 112152 and, in any event, was moot given that the FPUC overpayments had already been waived by the Department.<sup>1</sup>

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<sup>1</sup> Waiver of FPUC overpayments are governed by the provisions of Section 2104(f)(2)(A)-(B) of the CARES Act, Pub. L. 116-136, which requires, for waiver to be granted, that the overpayment of FPUC benefits be (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. Federal guidance explains that states may defer to state law for what it means for repayment to be contrary to equity and good conscience or defer to the federal standard. U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 20-21, Change 1 (February 7, 2022) (UIPL 20-21, Change 1) at 10. The federal standard provides that recovery is contrary to equity and good conscience when one of at least three general circumstances are present, or when one of seven specific blanket waiver scenarios exist. UIPL 20-21, Change 1 at 10-13.

Order No. 22-UI-193830 is also modified to require the Department to waive the entirety of claimant's regular UI overpayment, not only a portion of it, as concluded by the order. The order under review correctly concluded that waiver was warranted for the regular UI overpayments claimant received for weeks 22-20 through 30-20 and weeks 32-20 through 37-20, based on the *per se* waiver standard articulated in Temporary OAR 471-030-0070(6) that was effective those weeks. Order No. 22-UI-193830 at 9-10.

However, the record shows that waiver of the entirety of claimant's regular UI overpayment is required by operation of ORS 657.317(2)(a) and OAR 471-030-0053. Applying those provisions, waiver is available in claimant's circumstance because claimant's regular UI overpayment was an overpayment under ORS 657.315(1) due to agency error. Moreover, recovery of claimant's overpaid regular UI benefits is against equity and good conscience as defined by OAR 471-030-0053(2). First, claimant's total allowable household expenses exceeded 90% of his total household income less unemployment benefits. The record shows that claimant's monthly total household income, not counting unemployment benefits received, amounted to a net monthly income of \$2,661.46, 90% of which equals \$2,395.31. The record further shows that claimant's monthly total allowable household expenses amounted to \$2,782.09. \$2,782.09 is more than \$2,395.31. Additionally, claimant had no assets or other means to repay his regular UI overpayment. Thus, claimant had no means to repay the overpaid regular UI benefits and had total allowable household expenses that equaled or exceeded 90% of his total household income less unemployment benefits. Therefore, recovery of claimant's overpaid regular UI benefits is against equity and good conscience and waiver of the overpayment is justified in this case.

For these reasons, Order No. 22-UI-193830 is modified. The Department is required to waive the entirety of the \$2,926 and \$80 overpayment of regular UI benefits that claimant received.

**DECISION:** Orders No. 22-UI-193827 and 22-UI-193829 are affirmed. Order No. 22-UI-193830 is modified as set forth above.

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

**DATE of Service: August 11, 2022**

**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 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**

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**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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