

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0648**

*Affirmed*  
*Overpayment Waivers Denied*

**PROCEDURAL HISTORY:** On March 29, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for a waiver of an overpayment of regular unemployment insurance (UI) benefits, extended benefits (EB), Pandemic Emergency Unemployment Compensation (PEUC) benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wages Assistance (LWA) benefits that the Department had previously assessed on December 2, 2021 (decision # 141045). Also on March 29, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of an overpayment of Emergency Unemployment Compensation (EUC) benefits that the Department had previously assessed on October 22, 2014 (decision # 140056). Claimant filed timely requests for hearing on decisions # 141045 and 140056. On May 18, 2022, ALJ Frank conducted a hearing, and on May 19, 2022 issued Orders No. 22-UI-194148 and 22-UI-194150, affirming decisions # 141045 and 140056. On June 6, 2022, claimant filed applications for review of Orders No. 22-UI-194148 and 22-UI-194150 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-194148 and 22-UI-194150. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0647 and 2022-EAB-0648).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision as necessary to complete the record under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a December 2, 2021 administrative decision assessing an overpayment, an October 19, 2021 administrative decision regarding a work separation, and an October 22, 2014 administrative decision assessing an overpayment, which have been marked as EAB Exhibits 1, 2, and 3, respectively. A copy of these exhibits have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1, 2, or 3 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

**FINDINGS OF FACT:** (1) On October 22, 2014, the Department served notice of an administrative decision concluding that claimant willfully underreported his earnings while claiming benefits for a period of weeks in 2013 and 2014, and assessing a \$2,576.00 overpayment<sup>1</sup> that claimant was required to repay to the Department, a \$772.80 monetary penalty, and a 20-week disqualification from future benefits (decision # 194594). *See* EAB Exhibit 3. On November 12, 2014, decision # 194594 became final without claimant having filed a request for hearing.

(2) On March 5, 2020, claimant voluntarily quit working for an employer (“3RM”). On March 8, 2020, claimant claimed benefits for the week of March 1, 2020 through March 7, 2020. At that time, claimant certified on his weekly claim form he had not quit a job during the week of March 1, 2020 through March 7, 2020. The Department subsequently paid claimant benefits.

(3) On October 19, 2021, the Department served notice of an administrative decision concluding that claimant quit working for 3RM without good cause, and therefore was disqualified from receiving benefits effective March 1, 2020 (decision # 74110). *See* EAB Exhibit 2. On November 8, 2021, decision # 74110 became final without claimant having filed a request for hearing.

(4) On December 2, 2021, the Department served notice of an administrative decision, based in part on decision # 74110, concluding that claimant willfully made misrepresentations of material fact to obtain benefits to which he was not entitled, and assessing an overpayment of \$55,033.00 in combined regular UI, EB, PEUC, FPUC, and LWA benefits that claimant was required to repay, a \$15,969.90 monetary penalty, and a 52-week penalty disqualification from future benefits. The basis of the conclusions in the December 2, 2021 administrative decision was claimant’s failure to report the March 5, 2020 quit and his underreporting of earnings while claiming benefits for a period of weeks in 2020 and 2021. *See* EAB Exhibit 1. On December 22, 2021, the December 2, 2021 administrative decision became final without claimant having filed a request for hearing.

(5) On March 22, 2022, claimant submitted to the Department requests for waiver of the remaining overpayment and penalty balances that had been assessed by decision # 194594 and the December 2, 2021 administrative decision.

(6) On April 1, 2022, claimant filed a request for hearing. EAB Exhibit 1 at 8. This request was construed as a request for hearing on decisions # 194594, 74110, and the December 2, 2021 administrative decision, but claimant subsequently withdrew his request for hearing on decision # 194594.<sup>2</sup> On May 2, 2022, ALJ Frank conducted hearings on decision # 74110 and the December 2, 2021 administrative decision to determine whether claimant had good cause to file the late request for hearing on either administrative decision and, if so, the merits of the respective decision(s). On May 10, 2022, ALJ Frank issued Orders No. 22-UI-193323 and 22-UI-193322, dismissing claimant’s requests

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<sup>1</sup> Although decision # 194594 does not state under which program or programs claimant was overpaid benefits, decision # 140056 suggests that the overpayment assessed by decision # 194594 was for benefits paid under the EUC program, a federal program that funded benefits from 2008 until 2013. *See* Pub. L. 110-252, as amended.

<sup>2</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

for hearing on decisions # 74110 and the December 2, 2021 administrative decision as late without good cause, leaving those administrative decisions undisturbed. Claimant filed timely applications for review of Orders No. 22-UI-193323 and 22-UI-193322. On June 9, 2022, EAB issued EAB Decisions 2022-EAB-0591 and 2022-EAB-0592, affirming Orders No. 22-UI-193322 and 22-UI-193323. On July 9, 2022, EAB Decisions 2022-EAB-0591 and 2022-EAB-0592 became final without claimant having filed petitions for review with the Oregon Court of Appeals.

**CONCLUSIONS AND REASONS:** Claimant is not entitled to waiver of the remaining balances resulting from the overpayments assessed by decision # 194594 and the December 2, 2021 administrative decision.

**Waiver of State Benefits.** 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.” Under ORS 657.317(2)(b), the Department may not waive recovery of overpaid benefits that are subject to the penalty imposed under ORS 657.310(2). ORS 673.310(2) provides for the assessment of monetary penalties when an overpayment results from an individual having willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits, pursuant to ORS 657.215. Overpayments of state benefits (here, regular UI and extended benefits) are subject to these statutes.

The overpayments and monetary penalties assessed by decision # 194594 and the December 2, 2021 administrative decision were premised upon the Department’s findings that claimant had made willful misrepresentations of material fact in order to obtain benefits. Both of those administrative decisions became final without claimant having filed timely requests for hearing, and claimant’s late requests for hearing on those decisions were determined by the Office of Administrative Hearings (OAH) to be late without a showing of good cause. EAB affirmed OAH’s orders dismissing the late requests for hearings, and EAB’s decisions became final without claimant having appealed them to the Court of Appeals.

The result of this history is that the findings originally reached by decision # 194594 and the December 2, 2021 administrative decision—in particular, that claimant willfully misrepresented material facts to obtain benefits to which he was not entitled—are now final as a matter of law. As such, EAB lacks jurisdiction to re-examine the question of whether claimant’s misrepresentations of material fact were willful, such that they would be subject to the penalties provided for under ORS 657.310(2). Instead, EAB must accept the findings that claimant’s misrepresentations were willful and proceed accordingly.

The overpayments of state benefits therefore, as a matter of law, resulted from claimant’s willful misrepresentations of material fact. Because these overpayments are therefore subject to monetary penalties imposed under ORS 657.310(2), the Department may not waive recovery of those overpaid benefits. As such, claimant is not entitled to a waiver of the remaining balance of the state benefit overpayments.

**Waiver of Federal Benefits.** Each of the federal programs that funded the various federal benefits that claimant was overpaid per decision # 194594 and the December 2, 2021 administrative decision—EUC, PEUC, FPUC, and LWA—are governed by separate statutes. Accordingly, the authority to grant waivers of overpaid EUC, PEUC, FPUC, and LWA benefits are found at Pub. L. 110-252 § 4005(b)(1),

Pub. L. 116-136 § 2107(e)(2), Pub. L. 116-136 § 2104(f)(2), and § 262(b) of the Continued Assistance for Unemployed Workers Act of 2020. However, the waiver provisions of each of these statutes are drafted substantially the same, and contain the same essential requirement: that in order for a state to waive repayment of an overpayment of federal benefits, the individual who received the overpaid benefits must have been “without fault” in causing the overpayment.

As discussed above, the overpayment and penalties assessed by decision # 194594 and the December 2, 2021 administrative decision were, as a matter of law, caused by claimant’s willful misrepresentation of material facts. Claimant therefore cannot be said to be “without fault” for the overpayments, and the Department may not waive recovery of the overpaid federal benefits.

**DECISION:** Orders No. 22-UI-194148 and 22-UI-194150 are affirmed.

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

**DATE of Service:** September 16, 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.

**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 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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