

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1141**

*Modified*  
*Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On May 18, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$2,493.00 in regular unemployment insurance (regular UI) benefits, \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$300.00 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department, a \$3,807.90 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On November 7, 2022, ALJ Blam conducted a hearing, and on November 15, 2022 issued Order No. 22-UI-207285, modifying the May 18, 2022 administrative decision by concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$2,493.00 in regular UI benefits, \$10,200.00 in FPUC benefits, and \$300.00 in LWA benefits that claimant was required to repay to the Department, a \$3,173.25 monetary penalty, and a 52-week penalty disqualification from future benefits. On November 17, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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 concluding that claimant was overpaid \$2,493.00 in regular UI benefits, \$10,200.00 in FPUC benefits, and \$300.00 in LWA benefits is **adopted**. The remainder of this decision addresses whether claimant made a willful misrepresentation in order to obtain benefits to which he was not entitled.

**FINDINGS OF FACT:** (1) On March 31, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a weekly benefit amount of \$151.

Claimant was approximately 21 years old at the time that he filed his initial claim, and had never previously filed for unemployment insurance benefits.

(2) On his initial claim, claimant reported being unemployed due to a lack of work with his employers VF Outdoor, LLC (VF) and Buffalo Exchange, Ltd. (BE). Claimant worked for VF in Washington and worked for BE in Oregon.

(3) Claimant claimed benefits for the weeks including March 29, 2020 through August 1, 2020 (week 14-20 through 31-20). These are the weeks at issue. The Department paid claimant regular UI benefits, and either FPUC or LWA benefits, for all of the weeks at issue.

(4) Claimant last performed work for BE on or around March 16, 2020, after which the employer laid him off due to COVID-19 related closures. Thereafter, BE paid claimant “wages... in lieu of actual work” through the end of March 2020 due to store closures. Exhibit 1 at 13. Claimant began working for BE again on August 26, 2020. The Department did not notify claimants during this time that such payments must be reported when filing weekly claims.

(5) During the weeks including March 29, 2020 through June 20, 2020 (weeks 14-20 through 25-20), claimant did not perform work for VF. However, during those weeks, VF paid claimant “COVID pay” of approximately \$152 per week while VF’s stores were temporarily closed due to the COVID-19 pandemic. Exhibit 1 at 6. During each of the weeks including June 21, 2020 through August 1, 2020 (weeks 26-20 through 31-20), claimant worked for VF, earning between \$166.73 and \$384.08 per week. Exhibit 1 at 7.

(6) When claimant claimed benefits for each of the weeks at issue via the Department’s online claim system, he was required to answer the question, “Did you work last week, or receive any vacation or holiday pay?” Transcript at 10. Claimant did not report that he worked, or received pay, when he claimed benefits for any of the weeks at issue. Guidance available on the online claim system at the time stated, “Work means you performed services for any Employer and you expect to receive cash, credit, or room and board in return.” Transcript at 20.

(7) Claimant did not report that he worked or received pay when he claimed benefits for the weeks at issue because he did not believe that he was required to do so. Regarding the weeks during which he did not work but was paid “COVID pay” or similar, claimant did not understand “COVID pay” to be “considered something such as vacation pay or sick pay.” Transcript at 26. Additionally, claimant found the process of claiming benefits “very confusing,” and tried unsuccessfully to contact the Department to obtain clarification as to what he should report on his weekly claims. Transcript at 30. Claimant asked his parents, with whom he lived at the time, for advice about how to claim and what to report. Claimant’s parents advised him to “keep claiming unemployment in Oregon as [claimant] was still waiting to hear by from [BE].” Transcript at 30. Claimant acted according to his parents’ guidance.

**CONCLUSIONS AND REASONS:** Claimant did not make willful misrepresentations of material fact in order to obtain benefits, and is not liable for a monetary penalty or a penalty disqualification from future 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.* In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215.

The overpayment of benefits in this matter resulted from claimant's failure to report remuneration that his employers paid him either for work he performed, or as compensation (i.e., "COVID pay") for store closures due to the pandemic, during the weeks at issue. The order under review concluded that this overpayment was partially the result of claimant's willful misrepresentation of material fact in regards to the work he performed for VF during weeks 26-20 through 31-20, and that claimant was liable for a monetary penalty and a penalty disqualification from future benefits as a result of that willful misrepresentation. Order No. 22-UI-207285 at 8. In particular, the order under review concluded that claimant's failure to report his earnings during those weeks was willful because "he knew he was earning income and failed to report it to the Department." Order No. 22-UI-207285 at 8. The record does not support this conclusion.

In order to assess either a penalty disqualification from future benefits (AKA "penalty weeks") or a monetary penalty in connection with a misrepresentation of fact that leads to an overpayment of benefits, the record must show not merely that claimant made such a misrepresentation, but that he did so willfully for the purpose of obtaining benefits. An individual who merely misunderstands how to answer a question on a weekly claim form could easily make a misrepresentation of fact without intending to do so. The online claims system asked claimant, each week, "Did you work last week?" Claimant should have answered "yes" to that question for each of weeks 26-20 through 31-20, as he did actually perform work for VF during each of those weeks. Because he did not, he made a misrepresentation of material fact.

However, the Department has not met their burden<sup>1</sup> to show that claimant *intended* to make a misrepresentation of material fact in order to obtain benefits. Rather, the record shows that claimant was inexperienced in claiming unemployment insurance benefits, was unable to obtain guidance from the Department, and relied upon guidance from his parents in failing to report the work he performed during weeks 26-20 through 31-20. The record suggests that claimant's parents' advice to "keep claiming unemployment in Oregon" led claimant to believe that he was not required to report wages that he earned in a different state. Transcript at 30. While this belief was incorrect, claimant's testimony indicated that he acted accordingly merely due to his confusion over the process. The Department did not offer evidence to contradict this. Because the preponderance of the evidence shows that claimant failed to report his earnings for weeks 26-20 through 31-20 due to error rather than an intent to

---

<sup>1</sup> A party has the burden of persuasion as to each fact the existence or nonexistence of which the law declares essential to the claim for relief or defense the party is asserting. ORS 40.105.

misrepresent, he is not liable for penalty weeks or a monetary penalty in connection with benefits overpaid for those weeks.

Note that the order under review correctly concluded that claimant's failure to report his "COVID pay" for weeks 14-20 through 25-20 was not willful misrepresentation because claimant did not know that this pay should be reported, and the Department had not notified claimants otherwise. Order No. 22-UI-207285 at 8. The record supports this conclusion. Therefore, claimant is likewise not liable for penalty weeks or a monetary penalty in connection with benefits overpaid for weeks 14-20 through 25-20.

**DECISION:** Order No. 22-UI-207285 is modified, as outlined above.

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

**DATE of Service: January 20, 2023**

**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.

**NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email [OED\\_Overpayment\\_unit@employ.oregon.gov](mailto:OED_Overpayment_unit@employ.oregon.gov) . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "State UI Overpayment Waiver". To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "Federal Program Overpayment Waiver".**

**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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.