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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2023-EAB-0141</p>
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*Order No. 23-UI-212518 Affirmed ~ Late Request for Hearing Allowed,
Ineligible for Pandemic Unemployment Assistance
Order No. 23-UI-212548 Modified ~ Overpayment and Penalties*

PROCEDURAL HISTORY: On September 14, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective December 6, 2020. On September 29, 2022, the Department served notice of an administrative decision based in part on the September 14, 2022 PUA determination, concluding that claimant willfully made a misrepresentation to obtain benefits, and assessing an overpayment of \$7,585.00 in PUA benefits and \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, and as a \$2,667.75 monetary penalty. On October 4, 2022, the September 14, 2022 PUA determination became final without claimant having filed a request for hearing. On October 11, 2022, claimant filed a late request for hearing on September 14, 2022 PUA determination and a timely request for hearing on the September 29, 2022 overpayment decision.

On January 5, 2023, ALJ Lucas conducted hearings on the September 14, 2022 PUA determination and the September 29, 2022 overpayment decision. On January 12, 2023, ALJ Lucas issued Order No. 23-UI-212518, allowing claimant's late request for hearing on the September 14, 2022 PUA determination and affirming that decision on the merits. On January 13, 2022, ALJ Lucas issued order 23-UI-212548, concluding that claimant willfully made a misrepresentation to obtain benefits, and was overpaid \$7,585.00 in PUA benefits and \$10,200.00 in FPUC benefits, but modifying the September 29, 2022 overpayment decision by reducing the monetary penalty to \$1,137.75. On January 24, 2022 claimant filed applications for review of Orders No. 23-UI-212518 and 23-UI-212548 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-212518 and 23-UI-212548. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0142 and 2023-EAB-0141).

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-212518, which allowed claimant's late request for hearing on the September 14, 2022 PUA determination and affirmed the PUA determination, is **adopted**.

Based on *de novo* review of the entire consolidated record and pursuant to ORS 657.275(2), the portion of Order No. 23-UI-212548 concluding that claimant willfully made a misrepresentation to obtain benefits, and was overpaid \$7,585.00 in PUA benefits and \$10,200.00 in FPUC benefits is **adopted**. The remainder of this decision addresses the portion of Order No. 23-UI-212548 concluding that claimant's monetary penalty is \$1,137.75 because the amount of claimant's FPUC overpayment is not considered when calculating claimant's monetary penalty.

FINDINGS OF FACT: (1) On February 22, 2021, claimant filed an initial application for PUA benefits. On the application, claimant knowingly stated falsely that he was self-employed and experienced a significant reduction of services because of the COVID-19 public health emergency.

(2) Because of claimant's false statement, the Department concluded claimant had a valid claim for PUA benefits. Claimant claimed and was paid benefits for the weeks from December 6, 2020 through August 21, 2021 (weeks 50-20 through 33-21).

(3) Claimant was not entitled to the PUA and FPUC benefits he received. The Department overpaid claimant \$7,585.00 in PUA benefits and \$10,200.00 in FPUC benefits.

CONCLUSIONS AND REASONS: Order No. 23-UI-212518 is affirmed. Order No. 23-UI-212548 is modified to reflect that claimant is liable for a monetary penalty of \$2,667.75.

Under ORS 657.310(2)(a) and ORS 657.215, an individual who has willfully made a false statement or misrepresentation to obtain benefits is liable for a penalty of at least 15, but not greater than 30, percent of the amount of benefits the individual received to which they were not entitled. Likewise, "[w]ithin the context of the CARES Act, states must apply a minimum 15 percent monetary penalty to an individual's overpayment when the state determines that such an overpayment was made to an individual due to fraud." U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 20-21 (May 5, 2021) (UIPL 20-21), at 4. "Fraud includes instances where an individual knowingly has made . . . a false statement or representation of a material fact[.]" UIPL 20-21 at 4-5. "This fraud penalty is applicable to PUA, FPUC, MEUC, PEUC and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act." UIPL 20-21 at 5.

The order under review, citing to a different federal guidance document that was issued on an earlier date, concluded that claimant's FPUC overpayment is not considered when calculating the 15 percent penalty. Order No. 23-UI-212548 at 13 n.2, *citing* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) (UIPL 15-20), at I-6. However, UIPL 20-21 superseded the portion of the guidance document the order cited. Therefore, the order erred in not considering claimant's FPUC overpayment when calculating the monetary penalty.

The order under review was correct that Section F.1 of attachment I to UIPL 15-20 states that "[S]tates may not impose fraud penalty provisions on FPUC payments." UIPL 15-20 at I-6. However, UIPL 20-21 explains that "upon further legal analysis" the U.S. Department of Labor concluded that the fraud

penalty is applicable to CARES Act benefits programs, like PUA and FPUC, and specifically states that Section F.1 of Attachment I to UIPL 15-20 is superseded. UIPL 20-21 at 5. UIPL 20-21 furthermore states that States are required to apply the fraud monetary penalty for FPUC overpayments established on or after the date of UIPL 20-21, with discretion to apply the penalty “retroactively to the beginning of the CARES Act programs[.]” UIPL 20-21 at 5.

The record shows that claimant received his PUA and FPUC overpayments due to having knowingly made a false statement on his PUA initial application. The overpayments were therefore made to claimant due to fraud and, as such, a 15 percent monetary penalty must be applied to claimant’s overpayment. When calculating the penalty, both claimant’s PUA and FPUC overpayment amounts are to be considered.¹ Claimant was overpaid \$7,585.00 in PUA benefits and \$10,200.00 in FPUC benefits, for a combined overpayment amount of \$17,785.00. Fifteen percent of \$17,785.00 is \$2,667.75. Accordingly, claimant is liable for a 15 percent monetary penalty, which is \$2,667.75.

Claimant is liable for overpayments of \$7,585 in PUA benefits and \$10,200 in FPUC benefits. Order No. 23-UI-212548 is modified to reflect that claimant is also liable for a \$2,667.75 monetary penalty.

DECISION: Order No. 23-UI-212518 is affirmed. Order No. 23-UI-212548 is modified as clarified herein.

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

DATE of Service: March 23, 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. 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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¹ The Department was required to consider the FPUC overpayment when calculating the 15 percent monetary penalty because the September 29, 2022 overpayment decision establishing the FPUC overpayment was issued after UIPL 20-21’s May 5, 2021 publication date.



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
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