

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0217**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 20, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully failed to report a material fact to obtain benefits, and assessing an overpayment of \$7,905.00 in regular unemployment insurance (regular UI) and \$5,100.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,950.75 monetary penalty, and a 52-week disqualification from future benefits. Claimant filed a timely request for hearing. On January 9 and 25, 2023, ALJ Mott conducted a hearing, and on January 26, 2023 issued Order No. 23-UI-213776, modifying the July 20, 2021 administrative decision by assessing an overpayment of \$7,905.00 in regular UI and \$5,100.00 in FPUC benefits, but concluding that claimant did not willfully fail to report a material fact to obtain benefits and therefore was not liable for a monetary penalty or a disqualification from future benefits. On February 13, 2023, 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 did not willfully failed to report a material fact to obtain benefits, and therefore was not liable for a monetary penalty or a disqualification from future benefits, is **adopted**. The remainder of this decision addresses whether claimant is liable for an overpayment of benefits.

**FINDINGS OF FACT:** (1) On October 29, 2020, claimant filed an initial application for benefits. The Department determined that claimant had a weekly benefit amount of \$465.00. Claimant subsequently claimed benefits for the weeks from December 27, 2020 through April 24, 2021 (weeks 53-20 through 16-21). These are the weeks at issue. The Department paid claimant both regular UI and FPUC benefits for all of the weeks at issue.

(2) In or around December 2020, claimant applied for a job with Lane County (the employer). On December 28, 2020, claimant attended an “orientation” session with the employer. January 9, 2023 Transcript at 18. Claimant understood the session to be an opportunity to determine whether he wished to accept a job with the employer, and ultimately concluded that he did not wish to accept the job they offered. Claimant did not believe himself to have ever been employed by the employer.

(3) On January 4, 2021, claimant claimed benefits for the week that included December 28, 2020. At that time, claimant did not report that he had quit a job during the week claimed because he did not believe that he had been employed by the employer. As a result, the Department paid claimant benefits for that week. Later that month, claimant was surprised to find that the employer paid him approximately \$60 for his time spent at orientation.

(4) In or around July 2021, the Department received information from the employer regarding claimant’s orientation on December 28, 2020. The Department investigated the matter, and on July 16, 2021 issued administrative decision # 141732, concluding that claimant had quit work without good cause and was disqualified from receiving benefits effective December 27, 2020.

(5) The overpayment and penalties created by the July 20, 2021 administrative decision were based in part on the Department’s determination in decision # 141732 that claimant was disqualified from benefits effective December 27, 2020.

(6) Claimant filed a timely request for hearing on decision # 141732, which was affirmed at hearing. Claimant then filed an application for review of the ALJ’s order with EAB. EAB reversed the ALJ’s order, concluding that no work separation had occurred and that claimant therefore was not disqualified from receiving benefits based on a work separation. The Department filed a request for reconsideration of EAB’s decision. EAB granted the Department’s request. On reconsideration, EAB remanded the matter for further development of the record to determine whether claimant separated from work and, if so, whether the separation was disqualifying.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Order No. 23-UI-213776 is set aside and this matter remanded for further development of the record.

The order under review concluded, in relevant part, that claimant was overpaid regular UI and FPUC benefits that he was liable to repay to the Department. Order No. 23-UI-213776 at 6. The order under review based this conclusion on a finding that OAH had issued an order affirming decision # 141732 and disqualifying claimant from receiving benefits effective December 27, 2020, creating the overpayment in question. Order No. 23-UI-213776 at 2–3. However, as explained above, the order which affirmed decision # 141732 was appealed to EAB, and EAB has since remanded the matter for further development of the record. That matter must be settled before a determination can be made as to whether claimant was overpaid benefits.

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<sup>1</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.

Because further development of the record is necessary for a determination of whether claimant was overpaid benefits, Order No. 23-UI-213776 is set aside, and this matter is remanded.

**DECISION:** Order No. 23-UI-213776 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 6, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-213776 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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**

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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.

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