

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0398

Modified ~ Overpayment and Penalties
Modificada ~ Sobre pago y Multas

PROCEDURAL HISTORY: On December 9, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing an overpayment of \$13,214 in regular unemployment insurance (regular UI) benefits and \$7,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$6,124.20 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 193619). Claimant filed a timely request for hearing.

On February 21, 2023, ALJ Mott convened a hearing interpreted in Spanish but at which only logistical matters were addressed and no evidence was taken. On March 14, 2023, ALJ Mott conducted a hearing interpreted in Spanish, and on March 16, 2023 issued Order No. 23-UI-219381, modifying decision # 193619 by concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing an \$8,831.30 overpayment of regular UI benefits, a \$6,000 overpayment of FPUC benefits, a \$4,449.39 monetary penalty, and a 52-week penalty disqualification from receipt of future benefits. On April 5, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 9 de diciembre de 2022, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa que concluyó que el reclamante intencionalmente hizo falsificaciones y no informó el Departamento de hechos materiales para obtener beneficios. La decisión impuso un sobre pago de \$13,214 en beneficios regulares de seguro de desempleo (UI regular) y \$7,200 en beneficios de Compensación Federal por Desempleo Pandémico (FPUC) que el reclamante debía pagar al Departamento, una multa monetaria de \$6,124.20 y una descalificación de multa de 52 semanas de beneficios futuros (decisión # 193619). El reclamante presentó una solicitud oportuna de audiencia.*

El 21 de febrero de 2023, el juez administrativo Mott convocó una audiencia interpretada en español, pero en la que solo se abordaron asuntos logísticos y no se tomaron pruebas. El 14 de marzo de 2023, el juez administrativo Mott llevó a cabo una audiencia interpretada en español, y el 16 de marzo de

2023 emitió la Orden No. 23-UI-219381, modificando la decisión # 193619 al concluir que el reclamante intencionalmente hizo falsificaciones y no informó el Departamento de hechos materiales para obtener beneficios, y le impuso un sobrepago de \$ 8,831.30 de beneficios regulares de UI, un pago excesivo de \$ 6,000 de los beneficios de FPUC, una multa monetaria de \$4,449.39, y una multa de 52 semanas de descalificación para recibir beneficios futuros. El 5 de abril de 2023, el reclamante presentó una solicitud de revisión ante la Junta de Apelaciones de Empleo (EAB).

FINDINGS OF FACT: (1) On August 23, 2019, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits. The Department determined that claimant had a valid claim with a weekly benefit amount of \$357. The maximum weekly benefit amount in effect for a claim with a first effective week of claimant’s August 23, 2019 initial claim was \$648. On September 22, 2020, claimant filed another initial claim for regular UI benefits. The Department determined that claimant had a valid claim with a weekly benefit amount of \$673. The maximum weekly benefit amount in effect for a claim with a first effective week of claimant’s September 22, 2020 initial claim was \$673. On August 23, 2021, claimant filed another initial claim for benefits. The Department determined that claimant had a valid claim with a weekly benefit amount of \$477. The maximum benefit amount in effect for a claim with a first effective week of claimant’s August 23, 2021 initial claim was \$732.

(2) Claimant claimed benefits for the weeks including December 29, 2019 through January 4, 2020 (week 01-20), January 26, 2020 through February 1, 2020 (week 05-20), February 16, 2020 through February 22, 2020 (week 08-20), March 15, 2020 through June 6, 2020 (weeks 12-20 through 23-20), June 14, 2020 through June 27, 2020 (weeks 25-20 through 26-20), July 12, 2020 through July 18, 2020 (week 29-20), August 2, 2020 through September 19, 2020 (weeks 32-20 through 38-20), September 27, 2020 through October 10, 2020 (weeks 40-20 through 41-20), November 22, 2020 through November 28, 2020 (48-20), November 28, 2021 through December 11, 2021 (weeks 48-21 through 49-21), and January 9, 2022 through January 15, 2022 (week 02-22). These are the weeks at issue.

(3) For each of the weeks at issue, claimant completed a weekly continued claim form through the Department’s online claims system. Each weekly claim form asked the question, “Did you work last week[,] or[, did you] receive or will you receive vacation or holiday [pay for the week]?” Transcript at 18.

(4) For weeks 01-20, 05-20, 12-20, 21-20, 25-20, and 02-22, claimant did not work. On his weekly claim forms for each of those weeks, claimant accurately reported that he did not work.

(5) For each of weeks 08-20, 13-20 through 20-20, 22-20, 26-20, 29-20, 32-20 through 38-20, 40-20, 41-20, 48-21, and 49-21, claimant worked for the employer, 3 Kings Environmental Inc., and received earnings that exceeded his weekly benefit amount. Specifically, claimant worked and received earnings for each of these weeks as follows:

Week	Earnings	Weekly Benefit Amount
08-20	\$1,026.65	\$357
13-20	\$1,326.70	\$357
14-20	\$927.13	\$357
15-20	\$680.48	\$357

16-20	\$1,306.48	\$357
17-20	\$1,225.38	\$357
18-20	\$1,086.00	\$357
19-20	\$1,158.87	\$357
20-20	\$544.00	\$357
22-20	\$1,148.31	\$357
26-20	\$1,359.85	\$357
29-20	\$510.00	\$357
32-20	\$542.30	\$357
33-20	\$1,022.80	\$357
34-20	\$1,063.83	\$673
35-20	\$1,022.80	\$673
36-20	\$874.48	\$673
37-20	\$850.76	\$673
38-20	\$749.68	\$673
40-20	\$1,022.80	\$673
41-20	\$707.00	\$673
48-21	\$950.25	\$477
49-21	\$793.25	\$477

On his weekly claim forms for each of these weeks except for week 08-20, claimant falsely reported that he did not work. On his weekly claim form for week 08-20, claimant accurately reported that he worked but incorrectly reported that he earned an amount less than his weekly benefit amount for that week.

(6) For each of weeks 23-20 and 48-20, claimant worked for the employer and received earnings in amounts that were less than his weekly benefit amount. On his weekly claim form for week 23-20, claimant falsely reported that he did not work. On his weekly claim form for week 48-20, claimant accurately reported that he worked but incorrectly reported that he earned an amount less than the amount he actually earned. Specifically, claimant worked and received earnings for each of these weeks as follows:

Week	Earnings	Weekly Benefit Amount
23-20	\$340.24	\$357
48-20	\$432.00	\$673

(7) Claimant falsely reported that he did not work during weeks 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 32-20 through 38-20, 40-20, 41-20, 48-21, and 49-21. He did so because he was working only a few days per week during those weeks, was having financial difficulty, and believed the employer’s human resources manager stated it was okay for claimant to receive benefits by reporting that he did not work those weeks. Claimant further believed that the human resources manager stated that he was the only agent of the employer who knew that claimant had worked and would keep that fact a secret from the Department.

(8) The Department paid claimant \$357 per week in regular UI benefits for each of weeks 01-20, 05-20, 12-20 through 23-20, 25-20, 26-20, 29-20, and 33-20. The Department paid claimant \$346 in regular UI benefits for week 08-20 because claimant reported some earnings that week, which reduced his weekly benefit amount from \$357 to \$346. The Department did not pay claimant benefits for week 32-20. Although the Department believed it had paid claimant \$357 in regular UI benefits for that week via direct deposit, claimant never received any payments from the Department through direct deposit. The Department paid claimant \$673 per week in regular UI benefits for each of weeks 34-20 through 38-20, 40-20, 41-20, and 48-20. The Department paid claimant \$477 in regular UI benefits for each of weeks 48-21, 49-21, and 02-22.

(9) For weeks 14-20 through 23-20, 25-20, 26-20, and 29-20, the Department also paid claimant an additional \$600 per week in Federal Pandemic Unemployment Compensation (FPUC) benefits.

(10) Following the weeks at issue, the Department received claimant's quarterly wage information from the employer and noticed that the wage data reported by the employer did not match the earnings information claimant provided on his weekly claim forms for the weeks at issue. The Department conducted an audit and obtained from the employer claimant's gross earnings information for the weeks at issue, and assigned the earnings to the applicable weeks in a Sunday to Saturday format. The Department interviewed claimant and the employer and concluded that claimant had received benefits to which he was not entitled and willfully made misrepresentations to obtain those benefits.

CONCLUSIONS AND REASONS: Order No. 23-UI-219381 is modified. Claimant was overpaid \$10,643 in regular UI benefits and is liable under 657.310(2)(b) to repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable, and such overpayment may be collected by the Department at any time. Claimant is liable for an overpayment of \$6,000 in FPUC benefits to be recovered in accordance with the same procedures as apply to recovery of claimant's regular UI overpayment. Claimant is also subject to a \$4,992.90 monetary penalty and a 52-week penalty disqualification from receipt of future benefits.

CONCLUSIONES Y RAZONES: *Se modifica el Orden No. 23-UI-219381. Al reclamante se le pagaron en exceso \$10,643 en beneficios regulares de UI. El es responsable bajo 657.310(2)(b) de pagar los beneficios sobrepagados o hacer que los beneficios se deduzca de cualquier beneficio futuro pagadero. El Departamento puede cobrar el sobrepago en cualquier momento. El reclamante es responsable de un sobrepago de \$6,000 en beneficios de FPUC que se recuperará de acuerdo con los mismos procedimientos que se aplican a la recuperación del sobrepago regular de UI del reclamante. El reclamante también está sujeto a una multa monetaria de \$4,992.90 y una multa de 52 semanas de descalificación para recibir beneficios futuros.*

Remuneration. An individual is not eligible to receive unemployment insurance benefits if they are not unemployed. ORS 657.155(1)(e) (“An *unemployed individual* shall be eligible to receive benefits with respect to any week”) (emphasis added). Per ORS 657.100(1), an individual is deemed “unemployed”:

in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any

week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount.

For each of weeks 08-20, 13-20 through 20-20, 22-20, 26-20, 29-20, 32-20 through 38-20, 40-20, 41-20, 48-21, and 49-21, claimant worked for the employer and received earnings that exceeded his weekly benefit amount. At hearing, the Department and claimant provided evidence that differed regarding the amounts claimant earned for each of these weeks. The Department’s evidence was based on an earnings audit that involved obtaining gross earnings data from the employer and assigning earnings to the applicable weeks they were earned in a Sunday to Saturday format. Transcript at 11-12, 14, 22. Claimant’s evidence was based on net deposits made into his banking account after taxes and child support were withheld. Transcript at 31-33, 41-42. The weight of the evidence favors the Department’s earnings figures for these weeks because they reflected gross earnings and were tied more reliably to each week in question. Therefore, this decision uses the Department’s earnings data for these weeks, as follows:

Week	Earnings	Weekly Benefit Amount
08-20	\$1,026.65	\$357
13-20	\$1,326.70	\$357
14-20	\$927.13	\$357
15-20	\$680.48	\$357
16-20	\$1,306.48	\$357
17-20	\$1,225.38	\$357
18-20	\$1,086.00	\$357
19-20	\$1,158.87	\$357
20-20	\$544.00	\$357
22-20	\$1,148.31	\$357
26-20	\$1,359.85	\$357
29-20	\$510.00	\$357
32-20	\$542.30	\$357
33-20	\$1,022.80	\$357
34-20	\$1,063.83	\$673
35-20	\$1,022.80	\$673
36-20	\$874.48	\$673
37-20	\$850.76	\$673
38-20	\$749.68	\$673
40-20	\$1,022.80	\$673
41-20	\$707.00	\$673
48-21	\$950.25	\$477
49-21	\$793.25	\$477

Accordingly, for each of weeks 08-20, 13-20 through 20-20, 22-20, 26-20, 29-20, 32-20 through 38-20, 40-20, 41-20, 48-21, and 49-21, claimant performed services (work for the employer), received

remuneration for services performed (earnings from the employer),¹ and was paid more for the services performed than his weekly benefit amount. As a result, claimant was not “unemployed” during any of these weeks within the meaning of ORS 657.100(1) and therefore was not eligible to receive benefits for those weeks, with the exception of weeks 48-21 and 49-21, which are discussed below.

In contrast, for each of weeks 23-20 and 48-20, claimant worked for the employer and received earnings in amounts that were less than his weekly benefit amount. While the Department and claimant offered different earnings evidence for these weeks as well, for the same reasons mentioned above, this decision uses the Department’s earnings data for these weeks. Transcript at 11-12, 14, 22, 34, 35. That information is as follows:

Week	Earnings	Weekly Benefit Amount
23-20	\$340.24	\$357
48-20	\$432.00	\$673

For these weeks, claimant received remuneration for services performed in amounts that did not exceed his weekly benefit amount in either week. Thus, the evidence is sufficient to conclude that claimant was “unemployed” within the meaning of ORS 657.100(1) because claimant meets the latter criteria set forth by ORS 657.100(1), *i.e.*, that in a week of less than full-time work “the remuneration paid or payable . . . for services performed during the week is less than the individual’s weekly benefit amount.” Therefore, claimant was not ineligible to receive benefits for weeks 23-20 and 48-20 on the basis of not being “unemployed.”

However, claimant’s weekly benefit amounts for weeks 23-20 and 48-20 were subject to a reduction based on the earnings claimant received during each week. ORS 657.150(6) provides:

An eligible unemployed individual who has employment in any week shall have the individual’s weekly benefit amount reduced by the amount of earnings paid or payable that exceeds whichever is the greater of the following amounts:

- (a) Ten times the minimum hourly wage established by the laws of this state; or
- (b) One-third of the individual’s weekly benefit amount.

Applying ORS 657.150(6) to week 23-20, claimant’s weekly benefit amount was \$357 and the applicable minimum wage for Oregon was \$12.50 per hour.² Ten times the \$12.50 per hour minimum

¹ Subparts (2)(b) and (2)(c) of OAR 471-030-0017 (effective January 11, 2018) respectively state that “[e]arnings” means “remuneration” and, where an employer-employee relationship exists, “remuneration” means “compensation resulting from the employer-employee relationship, including wages[.]” Under these definitions, the earnings claimant received for work he performed for the employer during the weeks at issue constituted remuneration.

² OAR 471-030-0017(2)(i) provides that “[f]or purposes of ORS 657.150(6)(a), the term “minimum hourly wage” means the minimum wage rate as computed under 653.025(2).” ORS 653.025(2)(d) establishes a \$12.50 per hour minimum wage for the Portland, Oregon metropolitan area applicable from July 1, 2019 to June 30, 2020. Week 23-20 was the week of May 31, 2020 through June 6, 2020.

wage is \$125. One-third of claimant's \$357 weekly benefit amount is \$119. The greater of those two amounts is \$125. The amount of claimant's \$340.24 earnings for week 23-20 that exceeded \$125 was \$215.24. Claimant's \$357 weekly benefit amount for week 23-20 is therefore reduced dollar for dollar by \$215.24, which equals \$141.76 and is rounded down to the next lower full dollar amount.³ Thus, claimant's reduced weekly benefit amount for week 23-20 was \$141.

The ORS 657.150(6) reduction of claimant's weekly benefit amount for week 48-20 works differently because the statute was temporarily changed. On September 1, 2020, the Governor signed Senate Bill 1701, which, in relevant part, temporarily modified ORS 657.150(6) as follows:

An eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced, but not below zero, by the amount of earnings paid or payable that exceeds the greater of:

- (a) **\$300**; or
- (b) One-third of the individual's weekly benefit amount.

(emphasis added). This temporary change in the statute was effective September 6, 2020 through January 1, 2022 (weeks 37-20 through 52-21).

Applying ORS 657.150(6), as modified by Senate Bill 1701, to week 48-20, claimant's weekly benefit amount was \$673. One-third of \$673 is \$224.34. The greater of \$300 and \$224.34 is \$300. The amount of claimant's \$432 earnings for week 48-20 that exceeded \$300 was \$132. Claimant's \$673 weekly benefit amount for week 48-20 is therefore reduced dollar for dollar by \$132, which equals \$541. Thus, claimant's reduced weekly benefit amount for week 48-20 was \$541.

A similar temporary statutory change affects claimant's benefits for weeks 48-21 and 49-21. For both of these weeks, claimant worked for the employer and received earnings that exceeded his weekly benefit amount. As discussed above, receiving remuneration in a week that exceeds an individual's weekly benefit amount ordinarily has the effect of rendering that individual not "unemployed" for purposes of ORS 657.100(1) and therefore ineligible to receive benefits for that week. However, Oregon House Bill 3178, signed into law by the Governor on May 17, 2021, temporarily modified the definition of "unemployed" to remove the portion shown in strikethrough, below.

An individual is deemed "unemployed" in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work ~~if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount.~~

The effect of this temporary amendment, effective for weeks beginning May 23, 2021 through January 1, 2022 (weeks 21-21 through 52-21), is to consider individuals working less than full time to have been

³ ORS 657.152 states, "[n]otwithstanding any other provision of this chapter to the contrary, any amount of unemployment compensation payable to any individual for any week if not an even dollar amount, shall be rounded to the next lower full dollar amount."

“unemployed,” and therefore potentially eligible for benefits. This is the case even if they earned more than their weekly benefit amount during weeks claimed during the period in which the amendment is effective. Therefore, claimant was not ineligible to receive benefits for weeks 48-21 and 49-21 for lack of meeting the definition of “unemployed” set forth by ORS 657.100(1).

However, claimant’s weekly benefit amounts for weeks 48-21 and 49-21 remain subject to an earnings reduction per ORS 657.150(6) as modified by Senate Bill 1701. Claimant’s earnings and weekly benefit amount for weeks 48-21 and 49-21 were as follows:

Week	Earnings	Weekly Benefit Amount
48-21	\$950.25	\$477
49-21	\$793.25	\$477

Applying ORS 657.150(6), as modified by Senate Bill 1701, to week 48-21, claimant’s weekly benefit amount was \$477. One-third of \$477 is \$159. The greater of \$300 and \$159 is \$300. The amount of claimant’s \$950.25 earnings for week 48-21 that exceeded \$300 was \$650.25. Claimant’s \$477 weekly benefit amount for week 48-21 is therefore reduced dollar for dollar by \$650.25, which equals \$0 because the figure cannot be reduced below zero. Thus, claimant’s reduced weekly benefit amount for week 48-21 was \$0.

Applying ORS 657.150(6), as modified by Senate Bill 1701, to week 49-21, claimant’s weekly benefit amount was \$477. One-third of \$477 is \$159. The greater of \$300 and \$159 is \$300. The amount of claimant’s \$793.25 earnings for week 49-21 that exceeded \$300 was \$493.25. Claimant’s \$477 weekly benefit amount for week 49-21 is therefore reduced dollar for dollar by \$493.25, which equals \$0 because the figure cannot be reduced below zero. Thus, claimant’s reduced weekly benefit amount for week 49-21 was \$0.

Finally, for each of weeks 01-20, 05-20, 12-20, 21-20, 25-20, and 02-22, claimant did not work and received no earnings. At hearing, the Department and claimant provided evidence that differed regarding the amounts claimant earned for each of these weeks. The Department’s evidence was based on the earnings audit mentioned above. Transcript at 11-12, 14, 22. Claimant’s evidence was based on his firsthand account that he did not work during any of those weeks. Transcript at 28-29, 31, 34, 36. Because claimant’s account was firsthand, the weight of the evidence favors his earnings figures for these weeks. Therefore, this decision uses claimant’s earnings data for these weeks, and that information is as follows:

Week	Earnings	Weekly Benefit Amount
01-20	\$0	\$357
05-20	\$0	\$357
12-20	\$0	\$357
21-20	\$0	\$357
25-20	\$0	\$357
02-22	\$0	\$477

Because claimant did not work and received no earnings for each of weeks 01-20, 05-20, 12-20, 21-20, 25-20, and 02-22, claimant was eligible to receive benefits for those weeks and his weekly benefit amounts were not subject to earnings reductions.

To summarize, claimant was not eligible to receive benefits for weeks 08-20, 13-20 through 20-20, 22-20, 26-20, 29-20, 32-20 through 38-20, 40-20, 41-20, 48-21, and 49-21. Claimant was eligible to receive benefits for weeks 23-20 and 48-20, but at reduced weekly benefit amounts of \$141 and \$541, respectively. Claimant was eligible to receive benefits for weeks 01-20, 05-20, 12-20, 21-20, 25-20, and 02-22 at the full applicable weekly benefit amount for each week.

The order under review arrived at reduced weekly benefit amounts that differed from the foregoing analysis in part because the order incorrectly applied the earnings reduction formula set forth by Senate Bill 1701's modifications to ORS 657.150(6). Order No. 23-UI-219381 at 3 ¶ 5, 7-8. In so doing, the order erred.

Overpayment of Regular UI benefits. ORS 657.310(1)(a) 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.*

The record shows that claimant received regular UI benefits to which he was not entitled for weeks 08-20, 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-20, 48-21 and 49-21. This is the case because, as to weeks 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-21, and 49-21, claimant falsely reported on his weekly claim forms that he had not worked. Had claimant accurately reported that he worked and supplied correct earnings information, the Department would not have paid claimant benefits for weeks 13-20 through 20-20, 22-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-21, and 49-21. Similarly, if claimant had accurately reported that he worked during, and supplied correct earnings information for, week 23-20, the Department would have paid claimant only \$141 instead of his full weekly benefit amount for that week.

Claimant also received benefits to which he was not entitled for weeks 08-20 and 48-20 because, although he accurately reported that he had worked during those weeks on his weekly claim forms, the earnings amounts he reported for those weeks were incorrect. Had he reported his earnings for week 08-20 accurately, rather than paying the reduced benefit amount of \$346, the Department would not have paid claimant benefits for week 08-20 at all. Had he reported his earnings for week 48-20 accurately, the Department would have paid claimant only \$541 for that week instead of his full weekly benefit amount.

Note, however, that the Department did not pay claimant benefits for week 32-20. Claimant claimed benefits for that week, and falsely reported that he had not worked that week. The Department believed it had paid claimant \$357 in regular UI benefits for that week via direct deposit. However, at hearing, claimant emphatically denied that he ever received any payments from the Department through direct deposit. Transcript at 25. Moreover, the witness for the Department testified that other than week 32-20, the Department paid claimant either by paper check or a reloadable prepaid debit card. Transcript at 8.

Claimant acknowledged receiving these payments. Transcript at 25, 26. Given claimant’s denial of ever having received benefits through direct deposit coupled with the fact that it is unlikely for the Department to have paid claimant for one week in the middle of a claiming sequence through direct deposit and every other week by alternative means, the preponderance of evidence supports that claimant was not paid for week 32-20.

Accordingly, due to claimant’s false statements, he received regular UI benefits to which he was not entitled for weeks 08-20, 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-20, 48-21 and 49-21.

Claimant’s total regular UI overpayment is \$10,643. That figure consists of the following:

Week	Regular UI Overpayment
08-20	\$346
13-20	\$357
14-20	\$357
15-20	\$357
16-20	\$357
17-20	\$357
18-20	\$357
19-20	\$357
20-20	\$357
22-20	\$357
23-20	\$216 (claimant was entitled to a \$141 reduced benefit but was paid the full \$357)
26-20	\$357
29-20	\$357
33-20	\$357
34-20	\$673
35-20	\$673
36-20	\$673
37-20	\$673
38-20	\$673
40-20	\$673
41-20	\$673
48-20	\$132 (claimant was entitled to a \$541 reduced benefit but was paid the full \$673)
48-21	\$477

49-21	\$477
Total Regular UI overpayment: \$10,643	

Overpayment of FPUC benefits. Under the provisions of the CARES Act, 15 U.S.C. § 9023, claimant also received FPUC benefits to which he was not entitled. FPUC is a federal benefits program that provided eligible individuals with \$600 per week, in addition to their regular UI weekly benefit amount, during the period of March 29, 2020 through July 25, 2020 (weeks 14-20 through 30-20). *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) at 6, (UIPL 15-20). Individuals were eligible to receive the full \$600 FPUC benefit if they were eligible to receive at least one dollar of regular UI benefits for the claimed week. IPL 15-20 at I-5.

Because claimant was not eligible for at least one dollar of regular UI benefits for each of weeks 14-20, 15-20, 16-20, 17-20, 18-20, 19-20, 20-20, 22-20, 26-20, and 29-20, he also was ineligible to receive FPUC benefits for those weeks. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) at I-7 (“If an individual is deemed ineligible for regular compensation in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created.”).

Accordingly, claimant’s FPUC overpayment is \$6,000. That figure consists of the following:

Week	FPUC Overpayment
14-20	\$600
15-20	\$600
16-20	\$600
17-20	\$600
18-20	\$600
19-20	\$600
20-20	\$600
22-20	\$600
26-20	\$600
29-20	\$600
Total FPUC overpayment: \$6,000	

Willful Misrepresentation and Penalty Disqualification. Under ORS 657.215, “[a]n individual is disqualified for benefits for a period not to exceed 52 weeks whenever the Director of the Employment Department finds that the individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits[.]” The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052 (January 11, 2018), which provides, in pertinent part:

- (1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

* * *

The record shows that claimant willfully made false statements to obtain benefits for each of weeks 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-21, and 49-21 when he falsely reported on his weekly claim forms that he had not worked for any of those weeks. Claimant falsely reported that he did not work during those weeks because he was having financial difficulty and believed the employer's human resources manager stated it was okay for claimant to receive benefits by reporting that he did not work those weeks. Claimant further believed that the human resources manager stated that he was the only agent of the employer who knew that claimant had worked and would keep that fact a secret from the Department. Based on the foregoing, the preponderance of evidence supports that claimant intended to misrepresent his work status during each of weeks 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-21, and 49-21 for the purpose of obtaining benefits for those weeks.⁴

Therefore, claimant is subject to the penalty disqualification period set forth by ORS 657.215 as calculated by the method in OAR 471-030-0052(1)(a). With respect to weeks 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, and 33-20, the total amount of overpaid benefits was \$4,500 and the maximum weekly benefit amount in effect during the first effective week of the initial claim was \$648. The \$4,500 overpayment divided by \$648, multiplied by 4, and then rounded up to the nearest whole number equals 28.

With respect to weeks 34-20 through 41-20, the total amount of overpaid benefits was \$4,711 and the maximum weekly benefit amount in effect during the first effective week of the initial claim was \$673. The \$4,711 overpayment divided by \$673, multiplied by 4, and then rounded up to the nearest whole number equals 28.

With respect to weeks 48-21 and 49-21, the total amount of overpaid benefits was \$954 and the maximum weekly benefit amount in effect during the first effective week of the initial claim was \$732. The \$954 overpayment divided by \$732, multiplied by 4, and then rounded up to the nearest whole number equals 6.

⁴ Note, however, that for weeks 08-20 and 48-20, claimant accurately reported that he worked but incorrectly reported that he earned an amount less than the amount he actually earned. At hearing, claimant testified that he gave incorrect earnings information because he was estimating. Transcript at 30. As such, the evidence is insufficient that claimant willfully made false statements to obtain benefits in those two instances.

Thus, the calculation method set forth by OAR 471-030-0052(1)(a) produces a total of 62 weeks. ORS 657.215 permits a maximum of 52 weeks of penalty disqualification. Accordingly, claimant is subject to a 52-week penalty disqualification from receipt of future benefits.

Monetary Penalty. Under ORS 657.310(2)(a), 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. Per federal guidance, the minimum 15 percent monetary penalty is applicable to the amount of an individual's FPUC overpayment as well. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 20-21 (May 5, 2021) at 4-5.

The percentage of the monetary penalty is determined by applying the provisions of OAR 471-030-0052(7), which provides, in pertinent part:

The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:

* * *

(d) For the seventh or greater occurrence within 5 years of the occurrence for which a penalty is being assessed, 30 percent of the total amount of benefits the individual received but to which the individual was not entitled.

* * *

Here, claimant willfully made false statements to obtain benefits for each of weeks 13-20 through 20-20, 22-20, 23-20, 26-20, 29-20, 33-20 through 38-20, 40-20, 41-20, 48-21, and 49-21. These amount to 22 total occurrences. Therefore, the monetary penalty is 30 percent of the total regular UI and FPUC overpayment. Claimant's total regular UI and FPUC overpayment is \$16,643. Thirty percent of that figure is \$4,992.90. Thus, claimant is subject to a monetary penalty of \$4,992.90.

In summary, Order No. 23-UI-219381 is modified. Claimant was overpaid \$10,643 in regular UI benefits and is liable under 657.310(2)(b) to repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable, and such overpayment may be collected by the Department at any time. Claimant is liable for an overpayment of \$6,000 in FPUC benefits to be recovered in accordance with the same procedures as apply to recovery of claimant's regular UI overpayment. Claimant is also subject to a \$4,992.90 monetary penalty, and a 52-week penalty disqualification from receipt of future benefits.

DECISION: Order No. 23-UI-219381 is modified, as outlined above. *La Orden de la Audiencia 23-UI-219381 se modifica, de acuerdo a lo indicado arriba.*

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

DATE of Service: May 22, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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