

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0398-R**

*Request for Reconsideration Allowed*  
*EAB Decision 2023-EAB-0398 Adhered to on Reconsideration*

*Solicitud de Reconsideración Permitida*  
*EAB Decision 2023-EAB-0398 Se Permanecerá Sin Cambios*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** 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).

On May 22, 2023, EAB issued EAB Decision 2023-EAB-0398, modifying Order No. 23-UI-219381 by concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$10,643 overpayment of regular UI benefits, a \$6,000 overpayment of FPUC benefits, a \$4,992.90 monetary penalty, and a 52-week penalty disqualification from receipt of future benefits. On June 2, 2023, the Department filed a request for reconsideration of EAB Decision 2023-EAB-0398. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

***HISTORIA PROCESAL Y HECHOS:*** *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 sobrepago 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).*

*El 22 de mayo de 2023, el EAB emitió la Decisión EAB 2023-EAB-0398, modificando la Orden No. 23-UI-219381 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 \$10,643 de beneficios regulares de UI, un sobrepago de \$6,000 de los beneficios de FPUC, una multa monetaria de \$4,992.90, y una multa de 52 semanas de descalificación para recibir beneficios futuros. El 2 de junio de 2023, el Departamento presentó una solicitud de reconsideración de la Decisión EAB 2023-EAB-0398. Esta decisión se emite de conformidad con la autoridad del EAB bajo ORS 657.290(3).*

**CONCLUSIONS AND REASONS:** The Department’s request for reconsideration is allowed. EAB Decision 2023-EAB-0398 is adhered to on reconsideration.

**CONCLUSIONES Y RAZONES:** *El EAB reconsideró la Decisión EAB 2023-EAB-0398 en respuesta a la solicitud del Departamento. La Decisión EAB 2023-EAB-0398 se permanecerá sin cambios.*

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20<sup>th</sup> day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

The Department filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration is therefore allowed.

In the request, which was also a letter addressed to claimant notifying him that the request was filed, the Department stated as follows:

The Oregon Employment Department (OED) has requested reconsideration by the Employment Appeals Board (EAB) of 2023-EAB-0398, issued May 22, 2023, which found that you were overpaid however it did not include all overpayment amounts for the weeks of August 2-15, 2020 (32/20-33/20).

OED disputes the outcome of 2023-EAB-0398 because the claimant was paid unemployment benefits for the week at issue. OED's representative testified during the hearing process that this week's regular payment was paid by electronic deposit. However, OED records show that the regular benefits for week 32/20 were actually paid by a different method, through the claimant's Reliacard (RD).

The reconsideration request then displayed a screen grab of a screen from an internal Department database, that shows, among other things, an entry for "Week 32/20" and the phrase "Pay Status Code" next to which is listed "P RD". Department's Request for Reconsideration at 1.

As an initial matter, it is unclear whether the request is contending that 2023-EAB-0398 erred as to week 32-20 (the week of August 2, 2020 through August 8, 2020) only or as to both that week and week 33-20 (the week of August 9, 2020 through August 15, 2020). To the extent it is asserting an error as to week 33-20, the reconsideration request is without merit. 2023-EAB-0398 concluded that claimant received earnings that exceeded his weekly benefit amount for week 33-20, which resulted in claimant receiving \$357 to which he was not entitled for that week (his full weekly benefit amount). EAB Decision 2023-EAB-0398 at 5, 10. The Department reached the same conclusion regarding week 33-20 in the administrative decision that initiated this matter, decision # 193619. The Department made no showing in its reconsideration request that modification of 2023-EAB-0398 is warranted as to week 33-20.

Nor did it show that modification of 2023-EAB-0398 is warranted as to week 32-20. 2023-EAB-0398 concluded that the Department did not pay claimant benefits for week 32-20 after a careful review of the record, which showed, on the one hand, that claimant emphatically denied ever having received any payments from the Department through direct deposit. Transcript at 25. Specifically, claimant, through an interpreter, testified "other amounts and other dates were not paid to me as [the Department witness] said" and "[the Department witness] mentioned that a direct deposit of money was made into my account, and never, never, during the time that I have been requesting unemployment, I have never received a direct deposit paid into my account." Transcript at 25. The Department witness, in contrast, testified that claimant was paid by direct deposit for week 32-20 but for all of the other 30 weeks at issue was paid by either paper check or a reloadable prepaid debit card, known as a Reliacard. Transcript at 8. Claimant acknowledged receiving payments by check and Reliacard. Transcript at 25, 26. Based on this, where claimant credibly denied ever having received benefits through direct deposit and the Department purported to have paid claimant for one week in the middle of a claiming sequence through direct deposit and every other week by alternative means, 2023-EAB-0398 determined that the preponderance of evidence supported that claimant was not paid for week 32-20. EAB Decision 2023-EAB-0398 at 9-10.

In its reconsideration request, the Department acknowledges that claimant was not paid for week 32-20 by direct deposit. This confirms claimant's testimony on that subject. It is also a recognition that the scenario advanced by the Department witness at hearing—that the Department paid claimant for one

week in the middle of a claiming sequence through direct deposit—was unlikely and not entitled to much weight. It was because of these factors, the relative strength of claimant’s testimony versus the relative weakness of that of the Department on this point, that 2023-EAB-0398 determined that the preponderance of evidence supported that claimant was not paid benefits for week 32-20.

Nevertheless, the request asserts, by citation to the internal Department database screen, that the Department paid claimant by Reliacard for week 32-20 and requests that 2023-EAB-0398 be modified to reflect that the Department paid claimant benefits for that week. The information from the internal Department database screen is not in the record. To the extent that the Department seeks to add this information to the record, the Department has not shown, under OAR 471-041-0090(1)(b)(B) (May 13, 2019) that factors or circumstances beyond the Department’s reasonable control prevented them from offering the additional evidence into the record at hearing.

To the extent the Department is asserting that to modify 2023-EAB-0398 regarding week 32-20 is justified under OAR 471-041-0145(1) to correct an error of material fact, the Department’s request is without merit. Correction of an error of material fact or law is an enumerated ground upon which to make a reconsideration request. However, it is not appropriate to apply that provision where the party making the reconsideration request purports to correct an alleged error of material fact with information that is extraneous to the hearing record. In this case, the witness for the Department was free to consult internal Department databases and provide testimony consistent with the screen cited in the reconsideration request. That did not occur. EAB Decision 2023-EAB-0398 was decided based upon the record developed at hearing and its conclusion, based on the record evidence, regarding whether claimant was paid for week 32-20 was reached appropriately.

**DECISION:** The Department’s request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0398 is adhered to as clarified herein.

*DECISIÓN:* Se permite la solicitud de reconsideración del Departamento. En la reconsideración, la Decisión EAB 2023-EAB-0398 se permanecerá sin cambios como se aclara en este documento.

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

**DATE of Service:** June 15, 2023

*FECHA:* 15 de junio de 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.

**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.

*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**

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

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