

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0400

Reversed
Overpayment Waiver Granted

PROCEDURAL HISTORY: On November 7, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for an overpayment waiver of \$4,510.00 in Pandemic Unemployment Assistance (PUA) and \$4,500.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # 115407). Claimant filed a timely request for hearing. On March 27, 2023, ALJ Adamson conducted a hearing, and on March 31, 2023 issued Order No. 23-UI-220678, affirming decision # 115407. On April 3, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 27, 2020, claimant filed an initial claim for PUA benefits.

(2) On November 19, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits.

(3) Claimant filed weekly claims for regular UI benefits for the weeks from November 8, 2020 through April 10, 2021 (weeks 46-20 through 14-21).

(4) In April 2021, the Department transferred claimant's regular UI claims for weeks 46-20 through 16-21 to her PUA claim because they determined she was ineligible for UI and was eligible for PUA, and paid \$4,510.00 in PUA and \$4,500.00 in FPUC to claimant.

(5) In June 2021, the Department transferred the weekly claims for weeks 46-20 through 16-21 back to her regular UI claim because the Department determined she was eligible for regular UI and paid claimant regular UI and FPUC benefits for those weeks.

(6) On August 30, 2022, the Department issued decision # 141001, concluding that claimant was overpaid \$4,510.00 in PUA and \$4,500.00 in FPUC benefits for weeks 46-20 through 16-21 because she had been eligible for regular UI those weeks. Claimant filed a late request for hearing on decision #

141001, which was dismissed on March 9, 2023 by Order No. 23-UI-218480. Order No. 23-UI-218480 became final on March 29, 2023, without claimant having filed an application for review with EAB.¹

(7) On October 18, 2022, claimant requested a waiver of the overpayment assessed by decision # 141001.

(8) In March 2023, claimant worked full time and earned a net hourly wage of \$18.09. Her monthly average net income was \$3,130.40

(9) In March 2023, claimant's average monthly expenses included \$1,429.00 for rent, \$50.00 for water and sewage, \$200.00 for electricity, \$50.00 for phone service, \$450.00 for food, \$100.00 for transportation, \$500.00 in medical and other necessary support to her elderly parents, and at least \$38.36 for cable and internet service.

CONCLUSIONS AND REASONS: Claimant's request for a waiver of overpayment is granted.

Waiver of PUA overpayments are governed by 15 U.S.C. § 9021(d)(4), and FPUC overpayments are governed by the provisions of 15 U.S.C. § 9023(f), which require, for a waiver to be granted, that the overpayment of PUA and FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience.

Federal guidance provides that, in general, "an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility." Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21, Change 1) at 9 (February 7, 2022). However, "a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state . . . or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]" UIPL 20-21, Change 1 at 10.

Recovering overpaid benefits is against equity and good conscience if: (1) the person requesting a waiver has "no means to repay the benefits," and (2) "has total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits." OAR 471-030-0053(2) (effective January 11, 2018). The Department uses the IRS Collection Financial Standards to determine maximum allowable household expenses. OAR 471-030-0053(2).

The order under review concluded that claimant was not entitled to an overpayment waiver because although she was not at fault for the overpayment, repayment was not against equity and good conscience because her total allowable household expenses did not equal or exceed 90% of her total household income. Order No. 23-UI-220678 at 5. The record does not support this conclusion.

¹ 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.

The record shows that claimant was not at fault for the overpayment. The Department representative testified that she could not determine that claimant was at fault for the overpayment, and that the overpayment was caused by “administrative error.” Transcript at 6-7. The representative explained that the claim was transferred by the Department from regular UI to PUA because the Department determined claimant was ineligible for regular UI but eligible for PUA, then back to regular UI after determining that she was eligible for regular UI, causing claimant to be erroneously paid from both programs. This demonstrated that the error which caused the overpayment was made by the Department rather than by claimant. Accordingly, claimant met the first requirement to qualify for the overpayment waiver.

Further, the record shows that claimant had no means to repay the benefits and had total allowable household expenses that equaled or exceeded 90% of her total household income less unemployment benefits. The record shows that claimant’s net hourly wage was \$18.06, which, when multiplied by her average hours worked per week of 40, multiplied again by 52 weeks per year, and divided by 12 months per year, results in claimant’s average monthly income being calculated as \$3,130.40, and 90% of that amount as \$2,817.36. Transcript at 14-15. Claimant detailed various necessary monthly expenses for rent, utilities, transportation, food, and medicine which totaled \$2,779.00. Transcript at 13. Claimant also testified that she had a monthly “cable bill,” but was not permitted to testify as to the amount of that expense. Transcript at 17. The IRS Collection Financial Standards, which the Department relies upon in determining allowable monthly expenses, includes “cable television and Internet service” as allowable utility expenses.² It can be inferred that this monthly expense exceeded \$38.36.³ When added to the \$2,779 of expenses already established in the record, claimant’s total allowable household expenses therefore exceeded \$2,817.36, or 90% of total household income. Accordingly, the record shows that claimant had no means to repay the overpayment, and recovering the overpaid benefits is against equity and good conscience.

For these reasons, claimant’s request for waiver of overpayments totaling \$4,510.00 in PUA benefits and \$4,500.00 in FPUC benefits is granted.

DECISION: Order No. 23-UI-220678 is set aside, as outlined above.

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

DATE of Service: May 11, 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.

² <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (April 24, 2023).

³ *See* Federal Communication Commission Report 22-103, Appendix E at 6-7 (<https://docs.fcc.gov/public/attachments/FCC-22-103A3.pdf>), listing the average monthly price for basic cable service at \$42.63 as of January 1, 2022.

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 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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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.