

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0480**

*Modified*  
*Overpayment Assessed, No Penalties*

**PROCEDURAL HISTORY:** On February 4, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation to obtain unemployment insurance benefits, and assessing an overpayment of \$3,600 in regular unemployment insurance (regular UI) benefits, \$3,600 in Federal Pandemic Unemployment Compensation benefits (FPUC), a \$1,800 monetary penalty, and a 45-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On April 13, 2023, ALJ Lewis conducted a hearing, and on April 14, 2023 issued Order No. 23-UI-222195, affirming the February 4, 2022 administrative decision. On April 20, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's arguments in reaching this decision. Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) Beginning in approximately 2011, claimant owned and operated an art studio and gallery and derived self-employment income from that business.

(2) Beginning in approximately May 2011, claimant's mother (the employer) employed claimant full-time as a caregiver at a salary of \$48,000 per year.

(3) On March 16, 2020, claimant closed her art studio business as a result of government-imposed COVID-19 pandemic restrictions.

(4) On March 30, 2020, claimant filed an initial claim for unemployment insurance benefits. At that time, all claims were initially processed as regular UI claims, as an application for Pandemic Unemployment Assistance (PUA) had not yet been made available by the Department. Claimant

thereafter filed weekly claims for benefits for the weeks including March 29, 2020 through May 29, 2020 (weeks 14-20 through 19-20). These are the weeks at issue.

(5) On her initial claim for unemployment benefits, claimant reported that she was both “currently employed” and “self-employed.” Exhibit 2 at 14. She reported a pay rate of \$4,000 per month for her caregiving work with the employer and that she was “still working” in that employment. Exhibit 2 at 15.

(6) The Department determined that claimant had a valid claim for regular UI benefits with a weekly benefit amount of \$600. Claimant received \$600 in regular UI benefits and \$600 in FPUC benefits for each of the six weeks at issue, totaling \$3,600 in regular UI benefits and \$3,600 in FPUC benefits.

(7) During the weeks at issue, claimant did not receive self-employment income from her business. However, she continued to work for the employer and received her regular salary for each of the weeks at issue, which amounted to \$905.66 when calculated on a weekly basis.<sup>1</sup>

(8) On July 17, 2020, claimant filed an initial application for Pandemic Unemployment Assistance (PUA). The Department determined that claimant’s PUA claim was non-valid because claimant was monetarily eligible for regular UI based on her covered earnings from the employer.

(9) When claimant filed her initial claim for benefits, claimant intended to make a claim only for PUA. Claimant believed that she was entitled to PUA benefits to compensate her for lost self-employment earnings during the weeks at issue. Claimant did not understand that wages from traditional employment, both prior to and during any claim for benefits, were considered in determining a claimant’s eligibility for all unemployment insurance programs, including regular UI and PUA. Claimant was unable to contact the Department with questions about her claim during the weeks at issue due to the Department being overwhelmed with inquiries.

(10) For each of the weeks at issue, claimant was asked when filing her weekly claim if she worked that week, and claimant answered “No” each time. Claimant believed that her claim only pertained to compensation for lost self-employment income, and therefore thought that the question referred only to self-employment work and earnings.

(11) On January 3, 2022, while the Department conducted an investigation into claimant’s earnings for the weeks at issue, claimant called the Department and stated that she agreed with the Department’s findings that she had earned \$905.66 from the employer for each of the weeks at issue.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-222195 is modified. Claimant received \$3,600 in regular UI benefits and \$3,600 in FPUC benefits to which she was not entitled. Claimant is liable to repay the \$3,600 in regular UI benefits or have it deducted from any future benefits otherwise payable to claimant during the five-year period following the date the February 4, 2022 administrative decision becomes final. Claimant is also liable for an overpayment of \$3,600 in FPUC benefits to be recovered in accordance with the same procedures as apply to recovery of claimant’s regular UI overpayment. Claimant is not liable for a monetary penalty or penalty weeks.

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<sup>1</sup> \$48,000/53 weeks in 2020 = \$905.66

**Remuneration.** An individual is only eligible to receive unemployment insurance benefits if they are an “unemployed” individual within the meaning of ORS Chapter 657. ORS 657.155(1) (“An unemployed individual shall be eligible to receive benefits with respect to any week . . .”). Under 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.” Here, claimant’s weekly earnings from the employer of \$905.66 exceeded her weekly benefit amount of \$600 each week for all of the weeks at issue. Claimant therefore did not constitute an “unemployed individual” per ORS 657.100(1) for any of the weeks at issue and, accordingly, was not eligible for benefits for those weeks under ORS 657.155(1).<sup>2</sup>

**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. ORS 657.310(1)(a). Such benefits “may be collected for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.” ORS 657.310(1)(c). In addition, an individual who has been overpaid benefits under ORS 657.215 because the individual made a willful misrepresentation to obtain benefits is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2)(a). Moreover, an individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. “[O]verpaid benefits that are subject to the penalty imposed under [ORS 657.310(2)(a)] may be collected at any time.” ORS 657.310(2)(b). Where the Department has paid benefits, it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The order under review concluded that claimant was paid benefits to which she was not entitled because she made misrepresentations of fact on her weekly continued claims. Order No. 23-UI-222195 at 8. The record supports this conclusion. The order under review also concluded that claimant’s misrepresentations were willfully made to obtain benefits. Order No. 23-UI-222195 at 8. The record does not support this conclusion. The order under review is modified as outlined below to reflect that claimant is not liable for a monetary penalty or penalty weeks.

The record shows that for each of the weeks at issue, claimant made a false statement and received benefits to which she was not entitled because she answered “No” to the question, “Did you work last week?” Transcript at 7. The statements were false because for each week, claimant performed work for the employer. The false statements resulted in claimant receiving benefits to which she was not entitled,

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<sup>2</sup> Claimant’s written arguments suggest she may still misunderstand the eligibility requirements for PUA- most notably here that a claimant be *unemployed*- that is, not working full-time in *any* employment or self-employment, and not earning income from *any* source, whether employment or self-employment, in excess of a claimant’s benefit amount. Accordingly, though it has no bearing on this decision, claimant may wish to note that even if her initial application had been treated as a PUA claim, her earnings from the caregiving employment exceeded her benefit amount and would have precluded her from receiving PUA benefits for the weeks at issue.

because if claimant had accurately answered “Yes” and reported her weekly hours and earnings from the employer, the Department would not have paid claimant benefits for the weeks at issue. Claimant answered “No” to the question because she mistakenly believed that the question pertained only to her self-employment work and earnings, which claimant did not perform or receive during the weeks at issue. Although claimant’s false statements were made as the result of an error, ORS 657.310(1)(a) nevertheless applies because the provision is applicable where an individual makes a false statement, regardless of their knowledge or intent.

However, claimant is not liable for a monetary penalty or penalty weeks under ORS 657.310(2)(a) and ORS 657.215. The record fails to show that when claimant answered “No” to the question, “Did you work last week?” that her answers were false statements willfully made to obtain benefits. Rather, claimant answered “No” to the question because she mistakenly believed that the question pertained only to her self-employment work. Claimant therefore made the false statements because of an error, and not because of willful misrepresentation.

That claimant was operating under a mistaken belief that her claim pertained only to self-employment was not illogical under the circumstances and was consistent with her conduct. Claimant accurately reported on her March 30, 2020 initial claim for benefits that she was making \$4,000 per month from the employer and was still working for the employer at the time of the application. Exhibit 2 at 14-15. Based on this information, the Department should have denied claimant’s application for benefits under both the regular UI and PUA programs because claimant did not meet the statutory definition of “unemployed,” despite her loss of self-employment income. The Department’s erroneous approval of her initial claim for regular UI likely reinforced her mistaken belief that her wages from the employer were irrelevant to her claim and need not be reported on her continuing weekly claims. The record shows that claimant attempted to contact the Department for questions about her claim during this period, but was unable to reach a representative. Claimant’s admission, during the subsequent investigation of her claim, to having earned these wages and having failed to report them, is further evidence that claimant’s false statements that she was not working, which she submitted in her claims for the weeks at issue, were made based on a misunderstanding of the scope of the question posed rather than an intent to obtain benefits to which she was not entitled.

Accordingly, claimant made the false statements because of an error, and not willfully to obtain benefits. Claimant therefore was overpaid \$3,600 in regular UI benefits ( $\$600 \times 6 \text{ weeks} = \$3,600$ ) and is liable under 657.310(1)(c) to repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to claimant during the five-year period following the date the February 4, 2022 administrative decision becomes final. Claimant is not liable for a monetary penalty or penalty weeks under ORS 657.310(2)(a) and ORS 657.215.

**Repayment of FPUC Benefits.** Under the provisions of the CARES Act, 15 U.S.C. § 9023, claimant also received \$3,600 in FPUC benefits to which she was not entitled because she was not eligible for benefits under state law as explained above. *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.”). Pursuant to 15 U.S.C. § 9023(f)(2), an individual who receives FPUC payments to which the individual was not entitled is liable to repay those benefits, unless the Department waives such repayment because

it determines that the payment of those benefits was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. The record does not show the Department has waived repayment here.

Claimant therefore is liable for the overpayment of \$3,600 in FPUC benefits (\$600 x 6 weeks = \$3,600) she received during the weeks at issue. Under 15 U.S.C. § 9023(f)(3)(A), the Department may recover the FPUC benefits by deduction from any future FPUC payments payable to claimant or from any future unemployment compensation payable to claimant under any state or federal unemployment compensation law administered by the Department during the three-year period following the date she received the FPUC benefits to which she was not entitled.

United States Department of Labor guidance documents elaborate that while an FPUC overpayment may be offset by other State and Federal unemployment benefits payable during this three-year period, State agencies “must recover the amount of FPUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [UI] paid by the State.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) (UIPL 15-20), at I-7. “After three years, a State may continue to recover FPUC overpayments through means other than benefit offsets, according to State law.” UIPL 15-20 at I-7. Accordingly, because the provision of state law governing claimant’s regular UI overpayment is ORS 657.310(1), claimant is liable to repay the amount of her FPUC overpayment or have it deducted from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date the February 4, 2022 administrative decision becomes final.

**DECISION:** Order No. 23-UI-222195 is modified, as outlined above.

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

**DATE of Service:** May 26, 2023

**NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED\_Overpayment\_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program(s) for which you were overpaid benefits. If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications. To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.**

**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.

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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**

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  
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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.