

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0521**

*Modified*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On December 20, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$8,622.00 in regular unemployment insurance (regular UI) benefits, \$2,499.00 in extended benefits (EB), \$5,712.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$10,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, an \$8,289.90 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 195942). Claimant filed a timely request for hearing. On February 22, 2023, ALJ Monroe conducted a hearing, and on April 28, 2023 issued Order No. 23-UI-223540, modifying decision # 195942 by concluding that claimant was overpaid \$7,902.85 in regular UI benefits, \$2,499.00 in EB,<sup>1</sup> \$5,712.00 in PEUC benefits, and \$9,900.00 in FPUC benefits, but that claimant did not willfully make a misrepresentation and fail to report a material fact, and therefore did not assess a monetary penalty or penalty disqualification. On May 6, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portions of the order under review concluding that claimant earned unreported remuneration but did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and is therefore not liable for a monetary penalty or penalty weeks, are **adopted**. Further, the portions of the order under review assessing an overpayment of \$2,499.00 in EB, \$5,712.00 in PEUC benefits, and \$9,900.00 in FPUC benefits that claimant is liable to repay to the Department are **adopted**. Additionally, the portions of the order under review assessing an overpayment of \$7,234.00 in regular UI benefits that claimant is

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<sup>1</sup> The order under review concluded that there was a total of \$10,401.85 in overpaid regular UI and EB benefits during the claims at issue. Order No.23-UI-223540 at 17. Claimant received \$357 in EB per week for seven weeks in which claimant was not entitled to any benefits, totaling \$2,499.00. Order No. 23-UI-223540 at 10. The remainder of \$7,902.85 therefore constituted the overpayment of regular UI benefits.

liable to repay to the Department for the period excluding weeks 18-20, 19-20, 28-20, 36-20, and 11-21, are **adopted**.<sup>2</sup>

For weeks 18-20, 19-20, 28-20, and 36-20, the order under review found that claimant received \$357.00 in regular UI benefits each week but was entitled to regular UI benefits of \$302.10, \$242.16, \$145.38, and \$294.32 for those weeks, respectively, and therefore assessed overpayments of regular UI benefits of \$54.90, \$114.84, \$211.62, and \$62.68, respectively. Order No. 23-UI-223540 at 10. However, ORS 657.152 states, “Notwithstanding 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.” Accordingly, for those weeks, claimant was entitled to \$302.00, \$242.00, \$145.00, and \$294.00 in regular UI benefits, and was overpaid \$55.00, \$115.00, \$212.00, and \$63.00, respectively. These portions of the order under review are also **adopted**, subject to these rounding modifications.

The remainder of this decision addresses the overpayment of regular UI benefits for the week of March 14, 2021 through March 20, 2021 (week 11-21).

**FINDINGS OF FACT:** (1) On April 26, 2021, claimant filed an initial claim for unemployment insurance benefits. This claim was deemed monetarily valid with a weekly benefit amount of \$390 in regular UI benefits, and was given retroactive effect, beginning March 14, 2021. Claimant filed weekly claims for benefits on this claim, including for week 11-21.

(2) During week 11-21, claimant worked for Folium, Inc. On his weekly claim for benefits for week 11-21, claimant reported earning \$17.00 from this employment. Claimant earned \$357.31 during week 11-21 from this employment.<sup>3</sup> Based on his report of having only earned \$17.00 for the week, claimant was paid \$390 in regular UI benefits for week 11-21.

**CONCLUSIONS AND REASONS:** Claimant was overpaid \$58.00 in regular UI benefits for week 11-21, and was overpaid a total of \$7,737.00 in regular UI benefits that he is liable to repay to the Department.

Applying an inapplicable version of ORS 657.150(6), the order under review concluded that claimant was entitled to \$165.10 in regular UI benefits for week 11-21 and was therefore overpaid \$224.81 in regular UI benefits for that week. Order No. 22-UI-223540 at 8. The record does not support this conclusion.

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

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<sup>2</sup> \$10,401.85 (total regular UI and EB overpayment) - \$2,499.00 (EB overpayment) - \$54.90 (week 18-20 overpayment) - \$114.84 (week 19-20 overpayment) - \$211.62 (week 28-20 overpayment) - \$62.68 (week 36-20 overpayment) - \$224.81 (week 11-21 overpayment) = \$7,234.00.

<sup>3</sup> Because the employer reported claimant’s wages for the period including week 11-21 on a bimonthly basis, and no other evidence was introduced to determine during which week claimant earned the wages, the order under review allocated claimant’s wages to the weeks including week 11-21 in accordance with OAR 471-030-0017(3)(d). Order No. 22-UI-223540 at 2-3. EAB has adopted this portion of the order under review.

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 version of ORS 657.150(6) in effect during week 11-21 stated:

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) \$300; or

(b) One-third of the individual's weekly benefit amount.<sup>4</sup>

Claimant's weekly benefit amount during week 11-21 was \$390.00. One-third of that amount was \$130.00. The greater of the two amounts in ORS 657.150(6) was therefore \$300.00. Claimant's earnings allocated to week 11-21 were \$357.31, which exceeded \$300.00 by \$57.31. Claimant's weekly benefit amount was therefore reduced to \$332.69 (\$390 weekly benefit amount - \$57.31 = \$332.69), and rounded to the next lower full dollar amount pursuant to ORS 657.152. Accordingly, claimant was entitled to \$332.00 in regular UI benefits, but received \$390.00 in regular UI benefits. Thus, claimant was overpaid \$58.00 in regular UI benefits for week 11-20.

In summary, the regular UI overpayments for weeks 18-20, 19-20, 28-20, 36-20, and 11-21 are modified to \$55.00, \$115.00, \$212.00, \$63.00, and \$58.00, respectively. Claimant was therefore overpaid a total of \$7,737.00 in regular UI benefits. Claimant 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 decision # 195942 becomes final.

**DECISION:** Order No. 23-UI-223540 is modified, as outlined above.

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

**DATE of Service:** June 13, 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 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**

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<sup>4</sup> This version of ORS 657.150(6) was enacted by Senate Bill 1701 of the 2020 legislative session. It was in effect from September 1, 2020 through January 1, 2022, and was therefore applicable to week 11-21. Before Senate Bill 1701 was enacted and after its effective period ended, ORS 657.150(6)(a) read, "Ten times the minimum hourly wage established by the laws of this state; or[.]"

**<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.

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

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