

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0685-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0685 and Order No. 23-UI-226803 Modified on Reconsideration

PROCEDURAL HISTORY AND FINDINGS OF FACT: On April 20, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant’s request for a waiver of an overpayment of federal unemployment insurance benefits that the Department had previously assessed (decision # 153636). Claimant filed a timely request for hearing. On May 25, 2023, ALJ Roberts conducted a hearing, and on June 2, 2023 issued Order No. 23-UI-226803, reversing decision # 153636 by concluding that claimant’s waiver request should be granted. On June 16, 2023, the Department filed an application for review with the Employment Appeals Board (EAB). On July 28, 2023, EAB issued EAB Decision 2023-EAB-0685, affirming Order No. 23-UI-226803. On August 3, 2023, claimant filed a request for reconsideration of EAB Decision 2023-EAB-0685. This decision is issued pursuant to EAB’s authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant’s request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0685 and Order No. 23-UI-226803 are modified. The Department is required to refund claimant any sums she repaid in regards to the overpayments underlying the April 20, 2022 waiver denial.

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 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

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

In her request for reconsideration, claimant asserted that she contacted the Department after the issuance of EAB Decision 2023-EAB-0685 to inquire about the status of her overpayment waiver, and that the Department advised her “that they will only take off the remaining balance of \$998 and that they will not refund [claimant] back what [she] already paid on it.” Claimant’s Request for Reconsideration at 1. This assertion referred to the statement in the decision under reconsideration that “[Order No. 23-UI-226803] determined that claimant was eligible for a waiver of her remaining overpayment balances because, in relevant part, claimant was not at fault for the overpayment of benefits.” EAB Decision 2023-EAB-0685 at 1. EAB erred in so stating, as Order No. 23-UI-226803 did not address the question of whether the waiver of claimant’s overpayment balance should be limited to the portion of the balance that claimant had not yet paid.

On reconsideration, EAB Decision 2023-EAB-0685 and Order No. 23-UI-226803 are modified because, under the applicable federal guidance, the Department was required to refund to claimant any payments claimant had made towards the overpayments underlying the April 20, 2022 waiver denial. In other words, the Department was required to waive the entire portion of the overpayments they had assessed, and not just the remaining unpaid balance at the time that claimant applied for the waiver.

The benefits at issue in the underlying overpayments are Federal Pandemic Unemployment Compensation (FPUC) and Pandemic Emergency Unemployment Compensation (PEUC) benefits. Waivers of assessed overpayments of these benefits are governed by 15 U.S.C. § 9023(f)(2) and 15 U.S.C. § 9025(e)(2), respectively. Federal guidance on the waiver of recovery of these overpayments states, in relevant part:

Requirements for states exercising CARES Act waiver authority. As described in Section 4.a.i. of this UIPL, the state may choose to apply this provision to some or all of the CARES Act UC programs. **A state choosing to exercise the waiver authority under Options #1 and #2 must apply this practice to all overpayments created since the beginning of the CARES Act UC program(s).** For example, if a state decides to implement Option #2 with regards to PUA claims in January 2022 as they resolve workload items pending for weeks of unemployment ending prior to the end of the PUA program, the state must also retroactively identify and notify individuals with previously-established PUA overpayments of their potential waiver eligibility, consistent with Section 4.d.iv.A. of UIPL No. 20-21.

Additionally, as described in Section 4.d.iv.B. of UIPL No. 20-21, **if recovery of an overpayment is waived, the state must refund any amounts that were collected prior to the determination of the waiver for the applicable overpayment.** There is one exception to this refund requirement: specifically, that the state may not issue a refund for any benefits that were restored and then subsequently paid to the individual. For example, a state may have assessed an overpayment for particular weeks of unemployment and, upon collecting that overpayment amount from the individual, restored a balance to the individual’s claim. This restored balance allowed the individual to collect additional weeks of unemployment benefits that covered the amount of the collected overpayment. In such cases, the state may not issue a refund.

Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 18 (February 7, 2022) (emphasis added). “Options #1 and #2” refer to a set of three options that a state may elect in regards to waiving overpaid federal benefits: a state may choose to 1) process “blanket waivers” (i.e.,

applied to a broad class of claimants, rather than individually) under limited circumstances; 2) waive recovery of certain overpayments on an “individual, case-by-case basis”; or 3) not exercise the authority to waive recovery of any overpaid federal benefits. UIPL 20-21 Change 1 at 14–17. A state may choose to exercise both options 1 and 2 (i.e., may process both blanket waivers in some circumstances, and grant waivers on an individual basis in other circumstances).

The record does not explicitly show which option(s) the Department elected. However, as the Department granted claimant’s request for waiver of an overpayment of her regular unemployment insurance (regular UI) benefits, it is reasonable to infer that the Department elected at least to grant individual waivers.¹ Therefore, the Department is required to follow the guidance set forth above, and must refund any amount collected from claimant prior to the determination of the waiver she applied for regarding the applicable overpayments of federal benefits. Note that while the above guidance contains an exception to the refund requirement where the Department has restored benefits to a claimant’s claim, and subsequently paid those benefits to the claimant, the record contains no indication that such a restoration occurred here. Therefore, that exception does not apply.

For the above reasons, the Department must refund to claimant any sums she repaid in regards to the overpayments underlying the April 20, 2022 waiver denial.

DECISION: Claimant’s request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0685 is modified to as clarified herein. Order No. 23-UI-226803 is modified, as outlined above.

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

DATE of Service: September 19, 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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¹ Order No. 23-UI-226803 at 2.



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 الاستئناف 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.

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