

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0745-R**

*Request for Reconsideration Allowed*  
*EAB Decision 2023-EAB-0745 Adhered to on Reconsideration*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On August 8, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$3,874 in regular unemployment insurance (regular UI) benefits and \$6,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 141742). On August 29, 2022, decision # 141742 became final without claimant having filed a request for hearing. On November 10, 2022, claimant filed a late request for hearing on decision # 141742. ALJ Kangas considered claimant's request, and on March 15, 2023, issued Order No. 23-UI-219055, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 29, 2023. On March 28, 2023, claimant filed a timely response to the appellant questionnaire. On April 19, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-219055 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 141742.

On June 20, 2023, ALJ Nyberg conducted a hearing which was interpreted in Somali, and on June 28, 2023, issued Order No. 23-UI-229010, allowing claimant's late request for hearing on decision # 141742 and affirming that decision on the merits.<sup>1</sup> On July 5, 2023, claimant filed an application for review with the Employment Appeals Board (EAB). On August 23, 2023, EAB issued EAB Decision 2023-EAB-0745, affirming Order No. 23-UI-229010 as to claimant's late request for hearing and reversing Order No. 23-UI-229010 on the merits by concluding that claimant was not liable for an overpayment of benefits that she was required to repay to the Department. On September 5, 2023, the

<sup>1</sup> The order under review concluded that claimant was liable for, in relevant part, an overpayment of \$6,000 in FPUC benefits, rather than the \$6,600 figure assessed by decision # 141742. Order No. 23-UI-229010 at 6. However, the order under review earlier found that claimant was overpaid \$600 in FPUC benefits for eleven weeks, and the record does not otherwise support the conclusion that claimant was overpaid only \$6,000 in FPUC benefits. Order No. 23-UI-229010 at 6. As such, the figure cited in the conclusion is presumed to be scrivener's error.

Department filed a request for reconsideration of EAB Decision 2023-EAB-0745. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**CONCLUSIONS AND REASONS:** The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0745 is adhered to as clarified herein.

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

On August 8, 2022, the Department issued an administrative decision concluding that claimant received benefits to which she was not entitled and assessed an overpayment totaling \$10,474 in combined benefits that claimant was required to repay for the time period of May 10, 2020, through August 8, 2020 (decision # 141742). After a hearing on the merits of that decision, OAH issued Order No. 23-UI-229010, which affirmed the administrative overpayment decision. The decision under reconsideration reversed Order No. 23-UI-229010 because the overpayment decision amended the decisions to pay claimant more than a year after the decisions to pay had been made and is barred by ORS 657.267(4). EAB Decision 2023-EAB-0745 at 3–4.

In its request for reconsideration, the Department assigns error to this decision, asserting that despite the fact that more than a year had passed after the original decisions to allow payment, it nevertheless had authority to issue the overpayment decision, explaining, in relevant part:

...OED issued an overpayment decision (# 141742) on August 8, 2022, regarding weeks 20/20 – 32/20 (May 10, 2020 through August 8, 2020). While it's correct that this decision was issued more than 12 months after the weeks paid, it merely informs the claimant of an overpayment that resulted from a prior denying separation decision # 90242, which was issued under authority of ORS 657.176 and became final after January 11, 2021. That prior decision denying benefits with the week beginning May 10, 2020, was issued on December 23, 2020, which is within 12 months of the weeks being paid. Therefore, the Department had authority to deny the weeks at issue with no continuous jurisdiction necessary and the overpayment should stand.

Oregon Employment Department's Request for Reconsideration at 1.

The Department does not cite to any authority to support its argument that the overpayment decision is "merely informational," and that decision # 90242 is the amendment to the Department's previous decisions to pay claimant. Decision # 90242 does not reverse the decisions to pay claimant. Instead, decision # 90242 only concludes that claimant was denied benefits effective April 26, 2020, based on a

disqualifying work separation. Decision # 90242 did not conclude that claimant was denied, overpaid or required to repay benefits for any of the weeks at issue. The overpayment decision, however, amends the decision to pay by reversing the payment decisions and requiring claimant to repay benefits received. The overpayment decision therefore is not “merely informational.” Instead, it creates a financial liability to claimant, to the tune of thousands of dollars, *years* after payment was made, when the payments were not made due to a willful misrepresentation or fraud. The plain language on the Department’s administrative decision further strengthens this position because the overpayment decision issued by the Department cites to ORS 657.267. In contrast, decision # 90242 does not cite to ORS 657.267 as authority, but cites to state and federal law authorizing the program instead. Moreover, ORS 657.267(4) excludes amendments in cases of alleged fraud from the one-year time limitation. This implies that overpayment decisions, whether they be fraud, claimant fault but non-fraud, or agency error, are what the statute contemplates as the amendment of the original decisions to allow payment. Since the one enumerated (but excepted) type of case, an alleged case of fraud, takes the form of an overpayment decision, it follows that the one-year time limitation applies to claimant fault but non-fraud and agency error cases, and that ORS 657.267(4) contemplates the overpayment decisions that give rise to those kinds of cases as the amendment.

A review of the legislative history of ORS 657.267(4) lends further support to the conclusion that overpayment decisions amend payment decisions. The one-year time limit was added to the language of the statute out of concern that it would be inequitable to allow OED to go years when there was an “honest mistake.” If ORS 657.267(4) is construed to permit the Department to assess non-fraud overpayments without a time limitation, the practical effect is that the Department could be allowed to assess overpayments years after the circumstances giving rise to the overpayment occurred, contrary to the addition of the one-year time limit added to the language of the statute.

The Department’s request for reconsideration does not show that EAB Decision 2023-EAB-0745 contained an error of material fact or law, and does not offer support for its position. EAB Decision 2023-EAB-0745 therefore is adhered to on reconsideration.

**DECISION:** The Department’s request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0745 is adhered to as clarified herein.

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

**DATE of Service: October 25, 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.

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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، می توانید 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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