

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0750**

*Order No. 23-UI-229274 Affirmed ~ Late Request for Hearing Dismissed*  
*Order No. 23-UI-229273 Modified ~ Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On February 17, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective November 13, 2022 (decision # 102958). On March 9, 2023, decision # 102958 became final without claimant having requested a hearing. On May 12, 2023, the Department served notice of an administrative decision, based in part on decision # 102958, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$3,006 in regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department (decision # 100621). On May 18, 2023, claimant filed a late request for hearing on decision # 102958 and a timely request for hearing on decision # 100621. On June 27, 2023, ALJ Sachet-Rung conducted a hearing on decision # 102958 at which the employer did not appear and the Department submitted an Attestation in lieu of attending the hearing, and on June 30, 2023 issued Order No. 23-UI-229274, dismissing claimant's request for hearing as late and leaving decision # 102958 undisturbed. Also on June 27, 2023, ALJ Sachet-Rung conducted a hearing as to decision # 100621, and on June 30, 2023, issued Order No. 23-UI-229273, affirming decision # 100621. On July 5, 2023, claimant filed applications for review of Orders No. 23-UI-229274 and 23-UI-229273 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-229274 and 23-UI-229273. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0749 and 2023-EAB-0750).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-229274, which dismissed claimant's late request for hearing on decision # 102958, is **adopted**. The rest of this decision addresses Order No. 23-UI-229273.

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision as to Order No. 23-UI-229274 because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-

0080(2)(a) (May 13, 2019). However, EAB considered claimant's argument with respect to Order No. 23-UI-229273.

**FINDINGS OF FACT:** (1) On January 24, 2022, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a monetarily valid claim for regular UI benefits with a weekly benefit amount of \$334.

(2) In approximately October 2022, claimant began working for Bastien Trucking, LLC. On November 15, 2022, after approximately two weeks of employment, Bastien Trucking, LLC discharged claimant.

(3) On November 30, 2022, claimant requested to reopen his regular UI claim. He thereafter claimed benefits for the weeks of November 20, 2022 through January 21, 2023 (weeks 47-22 through 03-23). These are the weeks at issue. The Department paid claimant \$334 in regular UI benefits for each of these nine weeks, totaling \$3,006.

(4) On February 27, 2023, the Department issued decision # 102958, concluding that claimant was disqualified from receiving benefits effective November 13, 2022 because Bastien Trucking, LLC had discharged him for misconduct.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Order No. 23-UI-229273 is modified. Claimant was overpaid \$3,006 in benefits that he is liable to repay to the Department through deduction from future benefits.

ORS 657.310(1) 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 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.) 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).

Order No. 23-UI-229273 concluded that claimant was overpaid \$3,006 in regular UI benefits and was required to repay that amount to the Department "under ORS 657.310." Order No. 23-UI-229273 at 3. The record supports that claimant is liable to repay a \$3,006 overpayment through deduction from future benefits, but does not support that claimant is required to repay that amount under ORS 657.310.

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<sup>1</sup> As EAB affirms the dismissal of claimant's late request for hearing on decision # 102958, decision # 102958 remains undisturbed.

Under ORS 657.310(1), if the Department showed that claimant was overpaid because he “made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of [his] knowledge or intent,” he is required to repay the amount of the overpayment to the Department, and the Department is not limited to recovering the overpayment exclusively through deductions from future benefits. The Department alleged that claimant “failed to disclose a material fact . . . that [he] was discharged from work [on November 15, 2022].” Decision # 100621 at 1.

The record does not contain claimant’s November 30, 2022 request to reopen his claim for benefits, nor his weekly claim for benefits for the first week of the reopened claim, November 20, 2022 through November 26, 2022 (week 47-22). The Department did not establish through testimony what questions were asked or what answers were given during these transactions. However, claimant testified, “[W]hen I was receiving unemployment in November and December then that claim expired. I went to reopen it, or restart it, or whatever they call it. And I had told the – the representative or whatever the two weeks at, uh, Bastien. That I worked for them for the two weeks. Or whenever it was, reporting what you’re supposed to report.” Order No. 23-UI-229273 Transcript at 26. While the timing of this disclosure is somewhat unclear, this testimony suggests that claimant did not fail to disclose his discharge from Bastien Trucking, LLC to the Department. The Department did not rebut claimant’s testimony in this regard. Accordingly, the Department has failed to show that claimant was overpaid because he made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact. ORS 657.310(1) is therefore inapplicable to the recovery of claimant’s overpayment.

Claimant did not dispute that the Department paid him \$3,006 in regular UI benefits for the weeks at issue. Order No. 23-UI-229273 Transcript at 23-24. As decision # 102958 disqualified claimant from receiving benefits effective November 13, 2022, and the record does not suggest that claimant requalified for benefits prior to any of the weeks at issue, claimant was not entitled as a matter of law to receive any benefits for the weeks at issue. Accordingly, claimant was overpaid \$3,006 for the weeks at issue that he is liable to repay to the Department through deductions from future benefits under ORS 657.315(1).

For these reasons, Order No. 23-UI-229273 is modified. Claimant was overpaid \$3,006 in regular UI benefits and is liable to repay that amount to the Department only through deductions from future benefits in accordance with ORS 657.315(1).

**DECISION:** Order No. 23-UI-229274 is affirmed. Order No. 23-UI-229273 is modified, as outlined above.

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

**DATE of Service:** August 17, 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.

**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 <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”.

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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**

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**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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