

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0756**

*Order No. 23-UI-229409 Affirmed ~ Late Request for Hearing Dismissed*  
*Order No. 23-UI-229565 Modified ~ Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On July 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had been receiving retirement pay in an amount greater than or equal to his weekly benefit amount, and that he was therefore disqualified from receipt of benefits for the weeks of March 20, 2020 through May 9, 2020 and September 13, 2020 through September 19, 2020 (weeks 13-20 through 19-20 and 38-20) and until the reason for the denial had ended (decision # 101922). On August 16, 2021, decision # 101922 became final without claimant having filed a request for hearing. On August 8, 2022, the Department served notice of an administrative decision, based in part on decision # 101922, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$127 in regular unemployment insurance (regular UI) benefits that claimant was liable to repay to the Department through deduction from future benefits (decision # 124001). On August 18, 2022, claimant filed a late request for hearing on decision # 101922 and a timely request for hearing on decision # 124001. On June 30, 2023, ALJ Taylor conducted hearings, and on July 3, 2023 issued Order No. 23-UI-229409, dismissing claimant's late request for hearing on decision # 101922 and leaving decision # 101922 undisturbed. On July 5, 2023, ALJ Taylor issued Order No. 23-UI-229565, modifying decision # 124001 by concluding that claimant was overpaid \$127 that he was required to repay to the Department.<sup>1</sup> On July 7, 2023, claimant filed applications for review of Orders No. 23-UI-229409 and 23-UI-229565 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-229409 and 23-UI-229565. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0756 and 2023-EAB-0757).

<sup>1</sup> Though Order No. 23-UI-229565 stated it "set aside" decision # 124001, it modified that decision by affirming the assessment of a \$127 overpayment, but changing the authorized method by which the Department could recover the overpayment from being exclusively through deduction from future benefits pursuant to ORS 657.315(1) to allowing recovery through any lawful means pursuant to ORS 657.310(1). Order No. 23-UI-229565 at 3.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-229409, dismissing claimant's late request for hearing on decision # 101922, is **adopted**. The rest of this decision addresses Order No. 23-UI-229565, regarding claimant's overpayment.

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for unemployment insurance benefits on September 17, 2020. The Department determined the claim to be monetarily valid with a regular UI weekly benefit amount of \$673.

(2) Claimant claimed benefits for the week of September 13, 2020 through September 19, 2020 (week 38-20). Claimant received \$546 during this week in retirement pay, which was based on work previously performed, under a plan maintained or contributed to by a base year employer. The Department paid claimant his weekly benefit amount of \$673, less \$546 due to the deductible retirement pay, for a total of \$127 in regular UI benefits.

(3) On February 2, 2021, claimant requested to cancel his September 17, 2020 claim for benefits so that he could file and backdate a new claim for benefits to March 22, 2020.

(4) On July 23, 2021, the Department cancelled claimant's September 17, 2020 claim per his request and filed a new, backdated claim for benefits. The Department determined that claimant had a monetarily valid regular UI claim that was backdated to March 20, 2020, with a weekly benefit amount of \$246.

(5) On July 26, 2021, the Department issued decision # 101922, concluding that claimant was disqualified from receiving benefits for a period including the week of September 13, 2020 through September 19, 2020 (week 38-20) because he received deductible retirement pay that week in an amount equal to or in excess of his new weekly benefit amount.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-229565 is modified. Claimant was overpaid \$127 in benefits that he is liable to repay to the Department through deduction from future benefits.

ORS 657.205 provides, in relevant part, that an individual is disqualified for benefits for any week with respect to which the individual is receiving, will receive, or has received a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual, if payment is received under a plan maintained or contributed to by a base year employer of the individual.

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-229565 concluded that claimant was overpaid \$127 in regular UI benefits and was required to repay that amount to the Department “under ORS 657.310.” Order No. 23-UI-229565 at 3. The record supports that claimant is liable to repay a \$127 overpayment through deduction from future benefits, but does not support that claimant is required to repay that amount under ORS 657.310.

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 did not allege in decision # 124001 that the overpayment was the result of a false statement, misrepresentation, or failure to disclose a material fact. At hearing, the Department representative testified that the overpayment was “not claimant caused.” Order No. 23-UI-229565 Audio Record at 10:00 to 10:13. The record shows that the cause of the overpayment was the reduction in claimant’s weekly benefit amount that resulted from his canceling the September 17, 2020 claim to file a new, backdated claim in order to claim benefits for weeks in March through May 2020. Accordingly, claimant was not overpaid benefits due to making or causing to be made a false statement or misrepresentation of a material fact, or failing to disclose a material fact. ORS 657.310(1) is therefore inapplicable to the recovery of claimant’s overpayment.

The record shows that the Department paid claimant \$127 in regular UI benefits for the week of September 13, 2020 through September 19, 2020 (week 38-20). At the time of payment, claimant was entitled to a weekly benefit amount of \$673. Claimant testified that he received \$546 in retirement income that week. Order No. 23-UI-229565 Audio Record at 16:25 to 16:45. This retirement income was based on his previous work, under a plan maintained or contributed to by a base year employer. The Department was aware of this retirement income at the time of payment, and therefore paid claimant \$127 for week 38-20, after deducting \$546 in retirement pay from his \$673 weekly benefit amount. When the claim was subsequently cancelled and reestablished with an effective date of March 20, 2020, claimant’s weekly benefit amount was reduced from \$673 to \$246, as the new amount was calculated using a different base period. Because claimant’s retirement pay of \$546 exceeded his new weekly benefit amount of \$246, claimant was disqualified from benefits for week 38-20 by decision # 101922, which remains undisturbed.<sup>2</sup> He was therefore not entitled to the \$127 in regular UI benefits he had already received for week 38-20 as a matter of law. Claimant is therefore liable to repay the \$127 overpayment through deduction from future benefits pursuant to ORS 657.315(1).

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<sup>2</sup> As EAB affirms the dismissal of claimant’s late request for hearing on decision # 101922, that decision remains undisturbed.

For these reasons, Order No. 23-UI-229565 is modified. Claimant was overpaid \$127 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).<sup>3</sup>

**DECISION:** Order 23-UI-229409 is affirmed. Order No. 23-UI-229565 is modified, as outlined above.

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

**DATE of Service:** August 18, 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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<sup>3</sup> The Department’s representative testified that the overpayment had already been recovered through deduction from benefits. Order No. 23-UI-229565 Audio Record at 9:30 to 9:56.



# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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