

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0801-R**

*Request for Reconsideration Allowed*  
*EAB Decision 2023-EAB-0801 Adhered to on Reconsideration*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On August 10, 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 \$1,570 in regular unemployment insurance (regular UI) benefits and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 145806). On August 30, 2022, decision # 145806 became final without claimant having filed a request for hearing. On December 17, 2022, claimant filed a late request for hearing on decision # 145806. ALJ Kangas considered claimant's request, and on May 3, 2023, issued Order No. 23-UI-223843, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 17, 2023. On May 9, 2023, claimant filed a timely response to the appellant questionnaire. On June 1, 2023, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 23-UI-223843 was vacated and that a hearing would be scheduled to determine if claimant had good cause to file her request for hearing late and, if so, the merits of decision # 145806.

On June 27, 2023, ALJ Nyberg conducted a hearing, and on July 5, 2023, issued Order No. 23-UI-229461, allowing claimant's late request for hearing and affirming decision # 145806 on the merits. On July 19, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

On August 30, 2023, EAB issued EAB Decision 2023-EAB-0801, modifying Order No. 23-UI-229461 by allowing claimant's late request for hearing and reversing decision # 145806 by concluding that the Department was not authorized to assess an overpayment. On September 19, 2023, the Department filed a request for reconsideration with EAB. 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. EAB Decision 2023-EAB-0801 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 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

EAB Decision 2023-EAB-0801 modified Order No. 23-UI-229461, allowing claimant’s late request for hearing and reversing decision # 145806 by concluding the Department was without authority to issue the administrative decision. The Department filed a request for reconsideration of EAB Decision 2023-EAB-0801 consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed. However, EAB Decision 2023-EAB-0801 is adhered to on reconsideration because the Department did not show that the decision contained an error of material fact or law, or unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.

The Department contended that EAB’s decision contained a material error of fact or law in characterizing decision # 145806 as amending earlier decisions allowing claimant benefits to a decision denying benefits. Oregon Employment Department’s Request for Reconsideration at 1. The Department argued that, instead, a June 4, 2021, administrative decision disqualifying claimant from benefits for an indefinite period based on a work separation constituted the amendment of earlier decisions allowing benefits to a decision denying benefits. Oregon Employment Department’s Request for Reconsideration at 1. The Department acknowledged that the June 4, 2021, administrative decision was issued within one year of the initial decisions allowing benefits, while decision # 145806 was issued more than one year after the last decision allowing benefits was issued. Oregon Employment Department’s Request for Reconsideration at 1. The question of which administrative decision constituted the amendment of decisions allowing benefits to a decision denying benefits is determinative of whether the Department was authorized to issue that administrative decision pursuant to ORS 657.267(4). ORS 657.267(4) places a one-year limitation on the issuance of such amendments “except in cases of alleged willful misrepresentation or fraud.” The Department acknowledged “the absence of willful misrepresentation” in this case, and that therefore the one-year limitation was applicable. Oregon Employment Department’s Request for Reconsideration at 1.

ORS 657.267(1) requires the Department to make a prompt examination of *each claim for waiting week credit or for benefits* and, on the basis of the facts available, make a decision to *allow or deny* the claim. Decision # 145806 fell within the scope of ORS 657.267 because it denied benefits for specific weekly claims for waiting week credit or benefits, as opposed to forming the predicate for a later potential denial of weekly claims with a disqualification or ineligibility determination. EAB Decision 2023-EAB-0801 concluded that the June 4, 2021, administrative decision disqualifying claimant from benefits “effective January 24, 2021. . . did not amend the Department’s original decisions to allow claimant’s claims each week for weeks 11-21 through 20-21 because it did not purport to assess. . . whether each weekly claim was allowed or denied[.]” EAB Decision 2023-EAB-0801 at 4. EAB Decision 2023-EAB-0801 further concluded that only decision # 145806 determined with regard to each weekly claim whether claimant was allowed or denied benefits that week, and accordingly, whether she was overpaid

benefits. EAB Decision 2023-EAB-0801 at 4. The Department assigned error to these conclusions, asserting that decision # 145806 did not constitute a “decision” within the meaning of ORS 657.267(1)—and therefore an amendment under ORS 657.267(4)—because “it merely informs the claimant of an overpayment that resulted from a **prior** denying separation.” Oregon Employment Department’s Request for Reconsideration at 1 (emphasis in original). In fact, decision # 145806 did more than merely inform claimant of the existence of an overpayment. Decision # 145806, citing to ORS 657.267 as authority for its issuance, amended the earlier decisions to pay claimant by informing claimant that she had previously been allowed benefits for specific claimed weeks and that benefits were now being denied for those weeks that claimant was therefore required to repay. Exhibit 1 at 1-3. In contrast, the June 4, 2021, administrative decision did not cite ORS 657.267 as authority for its issuance, nor did it evince that the examinations required by ORS 657.267(1) as to each weekly claim for waiting week credit or benefits were conducted and resulted in denials of waiting week credit or benefits for those weeks. Therefore, decision # 145806 constituted an amendment pursuant to ORS 657.267(4), while the June 4, 2021, administrative decision did not. The Department has offered no additional authority or argument that supports their assertion that the June 4, 2021, administrative decision, rather than decision # 145806, constituted 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.

Accordingly, the Department has not shown that EAB made a material error of fact or law in concluding that, under the provisions of ORS 657.267, only decision # 145806 constituted an amendment of the original decision to pay benefits, and the Department was without authority to issue it more than a year after the initial decisions allowing benefits. EAB Decision 2023-EAB-0801 therefore is adhered to on reconsideration.

**DECISION:** The Department’s request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0801 is adhered to as clarified herein.

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

**DATE of Service: October 30, 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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# 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.

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