

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0802**

*Reversed*  
*Overpayment, Penalties*

**PROCEDURAL HISTORY:** On June 24, 2010, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$8,760 overpayment of regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department, a \$1,314 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On August 31, 2010, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 14, 2010. On September 14, 2010, ALJ Bear convened a hearing at which claimant failed to appear, and issued Order No. 10-UIB-23345-D, dismissing claimant's request for hearing due to his failure to appear. On October 4, 2010, Order No. 10-UIB-23345-D became final without claimant having filed a request to reopen with OAH or an application for review with the Employment Appeals Board (EAB).

On March 6, 2023, claimant filed a late request to reopen the September 14, 2010 hearing. On April 14, 2023, and continuing on April 21, 2023, ALJ Ramey conducted a hearing at which the employer Diverse Works Inc. failed to appear, and on April 28, 2023 issued Order No. 23-UI-223510, denying claimant's request to reopen the September 14, 2010 hearing as late without good cause, and leaving Order No. 10-UIB-23345-D undisturbed. On May 8, 2023, claimant filed an application for review of Order No. 23-UI-223510 with EAB. On June 14, 2023, EAB issued EAB Decision 2023-EAB-0535, reversing Order No. 23-UI-223510 by allowing claimant's late request to reopen and remanding the matter for a hearing on the merits.

On July 6, 2023, ALJ Ramey convened the parties for a hearing, at which the employers Torgerson Painting Company and Diverse Works Inc. did not appear, and reset the hearing for July 7, 2023, to accommodate the Department's authorized representative. On July 7, 2023, ALJ Ramey conducted a hearing at which the employers Torgerson Painting Company and Diverse Works Inc. failed to appear. On July 14, 2023, ALJ Ramey issued Order No. 23-UI-230489, reversing the June 24, 2010 administrative decision by concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, was not liable to repay benefits to the Department, and was not

liable for a monetary penalty or penalty weeks. On July 20, 2023, the Department filed an application for review with EAB.

**FINDINGS OF FACT:** (1) On November 24, 2008, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant had a valid claim for benefits with a first effective week of November 16, 2008 and a weekly benefit amount of \$292.

(2) Claimant claimed benefits for the week of November 16, 2008 through November 22, 2008 (week 47-08). When he did so, claimant did not list his earnings for the week. The Department sent claimant a letter requesting his hours and earnings for week 47-08. Claimant returned the letter reporting that he had worked eight hours and earned \$136 for week 47-08. Exhibit 9 at 1. However, claimant had actually earned \$323 from the employer Torgerson Painting Inc. for week 47-08. Because claimant reported \$136, which did not exceed claimant's weekly benefit amount, the Department concluded that week 47-08 was a compensable week and gave claimant waiting week credit for the week.

(3) Claimant claimed benefits for the week of November 23, 2008 through November 29, 2008 (week 48-08). The Department paid claimant \$292 for the week. However, because claimant's earnings for the prior week, week 47-08, exceeded his weekly benefit amount, week 47-08 should not have been deemed claimant's waiting week. Instead, when claimant claimed week 48-08, claimant should have received waiting week credit for that week rather than \$292.

(4) Claimant claimed benefits for the week of June 14, 2009 through June 20, 2009 (week 24-09). When he did so, claimant reported having no earnings for the week. However, claimant earned \$246.50 that week from the employer Torgerson Painting Inc. The Department paid claimant his weekly benefit amount of \$292 for the week plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 24-09 exceeded one-third of his weekly benefit amount, claimant was entitled to a reduced benefit amount for week 24-09 of \$142 plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009. Thus, claimant was entitled to only \$167 for week 24-09 and was overpaid \$150 for that week.

(5) Claimant claimed benefits for the week of August 9, 2009 through August 15, 2009 (week 32-09), and the week of August 16, 2009 through August 22, 2009 (week 33-09). When he did so, claimant reported having no earnings for either week. However, claimant earned \$258.70 during week 32-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 for week 32-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 32-09 exceeded one-third of his weekly benefit amount, claimant was entitled to a reduced benefit amount for week 32-09 of \$130 plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009. Thus, claimant was entitled to only \$155 for week 32-09 and was overpaid \$162 for that week. Claimant also earned \$940.06 during week 33-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 for week 33-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 33-09 exceeded his weekly benefit amount, claimant was not entitled to receive benefits for week 33-09 and was overpaid \$317 for that week.

(6) In the early morning hours of September 5, 2009, claimant was arrested for driving while intoxicated and placed in the Washington County, Oregon Jail. After spending about seven hours in jail that day, claimant was released. Thereafter, claimant claimed benefits for the week of August 30, 2009 through September 5, 2009 (week 35-09). The Department paid claimant his weekly benefit amount of \$292 for week 35-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant was incarcerated during week 35-09, claimant was not considered available for work that week and therefore was not entitled to receive benefits for week 35-09 and was overpaid \$317 for that week.<sup>1</sup>

(7) Claimant claimed benefits for the weeks of September 6, 2009 through September 12, 2009 (week 36-09), September 13, 2009 through September 19, 2009 (week 37-09), the week of September 20, 2009 through September 26, 2009 (week 38-09), the week of September 27, 2009 through October 3, 2009 (week 39-09), the week of October 4, 2009 through October 10, 2009 (week 40-09), the week of October 18, 2009 through October 24, 2009 (week 42-09), the week of October 25, 2009 through October 31, 2009 (week 43-09), the week of November 1, 2009 through November 7, 2009 (week 44-09), and the week of November 8, 2009 through November 14, 2009 (week 45-09).

(8) When claimant claimed weeks 36-09, 39-09, 40-09, 42-09, and 43-09, claimant reported having no earnings for any of the weeks. However, claimant earned \$412.33, \$367.47, \$728.52, \$1,064.97, and \$347.93, respectively, during each of weeks 36-09, 39-09, 40-09, 42-09, and 43-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317 for each of weeks 36-09, 39-09, 40-09, 42-09, and 43-09. However, because claimant's earnings for each of those weeks exceeded his weekly benefit amount, claimant was not entitled to receive benefits for any of those weeks and was overpaid \$317 for each of weeks 36-09, 39-09, 40-09, 42-09, and 43-09.

(9) When claimant claimed weeks 37-09, 38-09, 44-09, and 45-09, claimant reported having no earnings for any of the weeks. However, claimant earned \$288.00 during week 37-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 for week 37-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 37-09 exceeded one-third of claimant's weekly benefit amount, claimant was entitled to a reduced benefit amount for week 37-09 of \$101 plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009. Thus, claimant was entitled to only \$126 for week 37-09 and was overpaid \$191 for that week.

(10) Claimant also earned \$135.00 during week 38-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 for week 38-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 38-09 exceeded one-third of claimant's weekly benefit amount, claimant was entitled to a reduced benefit amount for week 38-09 of \$254 plus the additional

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<sup>1</sup> Moreover, when claimant claimed week 35-09, he reported having no earnings for the week. However, claimant earned \$180.00 during week 35-09 from the employer Diverse Works. Because claimant's \$180.00 earnings for week 35-09 exceeded one-third of his \$292 weekly benefit amount, claimant would have been entitled to a reduced benefit amount of \$209 (plus the additional \$25) for week 35-09, meaning that even if claimant had not been incarcerated that week, he would have been entitled to only \$234 and would have been overpaid \$83 for that week.

\$25 pursuant to the American Recovery and Reinvestment Act of 2009. Thus, claimant was entitled to only \$279 for week 38-09 and was overpaid \$38 for that week.

(11) Claimant also earned \$162.00 during week 44-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 for week 44-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 44-09 exceeded one-third of claimant's weekly benefit amount, claimant was entitled to a reduced benefit amount for week 44-09 of \$227 plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009. Thus, claimant was entitled to only \$252 for week 44-09 and was overpaid \$65 for that week.

(12) Claimant also earned \$198.64 during week 45-09 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$292 for week 45-09 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317. However, because claimant's earnings for week 45-09 exceeded one-third of claimant's weekly benefit amount, claimant was entitled to a reduced benefit amount for week 45-09 of \$190 plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009. Thus, claimant was entitled to only \$215 for week 45-09 and was overpaid \$102 for that week.

(13) On November 29, 2009, claimant's benefit year ended and the Department determined claimant had a new valid claim for benefits with a weekly benefit amount of \$230. Claimant claimed benefits for the week of November 29, 2009 through December 5, 2009 (week 48-09), the week of December 6, 2009 through December 12, 2009 (week 49-09), the week of December 13, 2009 through December 19, 2009 (week 50-09), the week of December 20, 2009 through December 26, 2009 (week 51-09), the week of December 27, 2009 through January 2, 2010 (week 52-09), and the week of January 3, 2010 through January 9, 2010 (week 01-10).

(14) When claimant claimed weeks 48-09, 49-09, 50-09, 51-09, 52-09, and 01-10, claimant reported having no earnings for any of the weeks. However, claimant earned \$441.00, \$600.26, \$563.69, \$690.26, \$450.00, and \$387.00, respectively, during each of weeks 48-09, 49-09, 50-09, 51-09, 52-09, and 01-10 from the employer Diverse Works. The Department paid claimant his weekly benefit amount of \$230 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$255 for each of weeks 48-09, 49-09, 50-09, 51-09, 52-09, and 01-10. However, because claimant's earnings for each of weeks 48-09, 49-09, 50-09, 51-09, 52-09, and 01-10 exceeded his weekly benefit amount, claimant was not entitled to receive benefits for any of those weeks and was overpaid \$255 for each of weeks 48-09, 49-09, 50-09, 51-09, 52-09, and 01-10.

(15) On Thursday January 14, 2010, claimant was again incarcerated at the Washington County Jail. Claimant remained incarcerated in the Washington County Jail until Saturday January 16, 2010. Claimant claimed benefits through the Department's online claiming system for the week of January 10, 2010 through January 16, 2010 (week 02-10). The Department paid claimant his weekly benefit amount of \$230 for week 02-10 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$255. However, because claimant was incarcerated in the Washington County Jail during week 02-10, claimant was not considered available for work that week and therefore was not entitled to receive benefits for week 02-10 and was overpaid \$255 for that week.

(16) On January 16, 2010, the authorities transferred claimant from the Washington County Jail to the Washington County Community Corrections Center, a correctional facility in which it was possible for claimant to continue working for Diverse Works while being incarcerated. Upon transfer to the Washington County Community Corrections Center, claimant continued working for Diverse Works. Claimant remained in the Washington County Community Corrections Center until March 12, 2010.

(17) Claimant claimed benefits for the week of January 17, 2010 through January 23, 2010 (week 03-10), the week of January 24, 2010 through January 30, 2010 (week 04-10), the week of January 31, 2010 through February 6, 2010 (week 05-10), the week of February 7, 2010 through February 13, 2010 (week 06-10), the week of February 14, 2010 through February 20, 2010 (week 07-10), the week of February 21, 2010 through February 27, 2010 (week 08-10), the week of February 28, 2010 through March 6, 2010 (week 09-10), and the week of March 7, 2010 through March 13, 2010 (week 10-10).

(18) The Department paid claimant his weekly benefit amount of \$230 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$255 for each of weeks 03-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, and 10-10. However, when claimant claimed each of those weeks he reported having no earnings for each of the weeks. However, claimant earned \$63.00, \$280.44, \$306.41, \$403.59, \$552.12, \$720.00, \$666.00, and \$522.00, respectively, during each of weeks 03-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, and 10-10. Because claimant's earnings for each of weeks 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, and 10-10 exceeded his weekly benefit amount, claimant was not entitled to receive benefits for any of those weeks and was overpaid \$255 for each of them.<sup>2</sup> Also, because claimant was incarcerated at the Washington County Community Corrections Center during weeks 03-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, and 10-10, claimant was not considered available for work those weeks and therefore was not entitled to receive benefits for the weeks and was overpaid for each of the weeks on that additional basis.

(19) On March 12, 2010, the authorities placed claimant on electronic home detention. While on home detention, claimant continued to work for Diverse Works and was available to accept other work. Claimant claimed benefits for the week of March 28, 2010 through April 3, 2010 (week 13-10), the week of April 4, 2010 through April 10, 2010 (week 14-10), and the week of April 11, 2010 through April 17, 2010 (week 15-10). When claimant claimed weeks 13-10, 14-10, and 15-10, claimant reported having no earnings for any of the weeks. However, claimant earned \$576.00, \$711.00, and \$702.00, respectively, during each of weeks 13-10, 14-10, and 15-10 from Diverse Works. The Department paid claimant his weekly benefit amount of \$230 plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$255 for each of weeks 13-10, 14-10, and 15-10. However, because claimant's earnings for each of weeks 13-10, 14-10, and 15-10 exceeded his weekly benefit amount, claimant was not entitled to receive benefits for any of those weeks and was overpaid \$255 for each of weeks 13-10, 14-10, and 15-10.

(20) On April 19, 2010, claimant violated the terms of his home detention and was returned to the Washington County Jail. That day, while he was in jail, claimant had his roommate call Diverse Works

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<sup>2</sup> Because claimant's \$63.00 of earnings for week 03-10 did not exceed his \$230 weekly benefit amount or ten times the minimum wage in effect in 2010, claimant was not ineligible to receive benefits for week 03-10 or subject to a reduced benefit amount for that week based on his earnings. Claimant was nevertheless ineligible to receive benefits for that week due to being unavailable for work because he was incarcerated that week.

and falsely state that claimant could not go to work because he was in the hospital with food poisoning. Diverse Works discovered that claimant was actually in jail and discharged him on April 21, 2010.

(21) On either April 19, 20, 21, or 22, 2010, claimant, while he was incarcerated in the Washington County Jail, had a telephone conversation with his girlfriend at the time. In the conversation, claimant told his girlfriend to claim his unemployment insurance benefits, suggested that she had done so previously, and gave her his Social Security number. The jail recorded the call and, thereafter a detective listened to the call. The detective called a Department investigator and conveyed the substance of the jailhouse call to the investigator. On April 22, 2010, the Department investigator documented their conversation with the detective as follows:

This case was opened because I received a call from a retired detective of WA County who works 10 hours per week listening to conversations of inmates and anytime he hears a conversation of a person mentioning UI issues he gives me a call. This detective overheard clmt telling a female companion to “file for my UI each week like you did before.” The female companion stated she did not have his SSN. Clmt gave the information to her. This conversation led me to ask the detective about other incarceration dates. Clmt was incarcerated 9.5.09, 1.14.10 and his current 4.19.10. Information to [a Department representative] to issue the AAA – incarceration decisions. In reviewing clmt’s records, it also appears there are unreported earnings and possible seps that need to be investigated.

Exhibit 8 at 1.

(22) On May 21, 2010, the Department issued decision # 165103, concluding that the employer Diverse Works discharged claimant on April 21, 2010 for misconduct and therefore claimant was disqualified from receiving benefits effective April 18, 2010. Exhibit 7 at 49-50. On May 21, 2010, decision # 165103 became final without claimant having filed a request for hearing. On May 26, 2010, the Department issued decision # 101957, concluding that claimant was not available for work because he was incarcerated in the Washington County Jail and the Washington Community Corrections Center for the weeks of 02-10 through 10-10 and therefore was not eligible to receive benefits for those weeks. Exhibit 7 at 47-48. On June 15, 2010, decision # 101957 became final without claimant having filed a request for hearing. On June 1, 2010, the Department issued decision # 120609, concluding that claimant was not available for work because he was incarcerated in the Washington County Jail during week 35-09 and therefore was not eligible to receive benefits for that week. Exhibit 7 at 45-46. On June 21, 2010, decision # 120609 became final without claimant having filed a request for hearing.

(23) On or about May 26, 2010, claimant was released from the Washington County Jail. Thereafter, claimant claimed benefits for the week of May 30, 2010 through June 5, 2010 (week 22-10), the week of June 6, 2010 through June 12, 2010 (week 23-10) and the week of June 13, 2010 through June 19, 2010 (week 24-10). The Department paid claimant a weekly benefit amount of \$292 under the Emergency Unemployment Compensation program, plus an additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total payment of \$317 for each of weeks 22-10, 23-10, and 24-10. However, because, under # 165103, claimant was disqualified from receiving benefits effective April 18, 2010, claimant was not entitled to receive benefits for any of those weeks and was overpaid \$317 for each of weeks 22-10, 23-10, and 24-10.

(24) In summary, claimant claimed weeks 47-08, 48-08, 24-09, 32-09, 33-09, 35-09, 36-09, 37-09, 38-09, 39-09, 40-09, 42-09, 43-09, 44-09, 45-09, 48-09, 49-09, 50-09, 51-09, 52-09, 01-10, 02-10, 03-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, 10-10, 13-10, 14-10, 15-10, 22-10, 23-10, and 24-10. These are the weeks at issue. Claimant was overpaid a combined total of \$8,760 for the weeks at issue as summarized below:

<b>Week</b>	<b>Weekly Benefit Amount</b>	<b>Amount entitled to</b>	<b>Amount Overpaid</b>	<b>Reason Overpaid</b>	<b>Claimant Status</b>
<b>47-08</b>	\$292	\$0	\$0 but received waiting week credit	n/a	Not incarcerated
<b>48-08</b>	\$292	\$0	\$292	Week 48-08 should have been waiting week	
<b>24-09</b>	\$292 + \$25 = \$317	\$167	\$150	Earnings exceeded 1/3 weekly benefit amount	
<b>32-09</b>	\$292 + \$25 = \$317	\$155	\$162	Earnings exceeded 1/3 weekly benefit amount	
<b>33-09</b>	\$292 + \$25 = \$317	\$0	\$317	Earnings exceeded weekly benefit amount	
<b>35-09</b>	\$292 + \$25 = \$317	\$0 (even if not in jail, entitled to only \$234)	\$317 (even if not in jail, overpaid \$83)	Not available for work	
<b>36-09</b>	\$292 + \$25 = \$317	\$0	\$317	Earnings exceeded weekly benefit amount	Not Incarcerated
<b>37-09</b>	\$292 + \$25 = \$317	\$126	\$191	Earnings exceeded 1/3 weekly	

				benefit amount
<b>38-09</b>	\$292 + \$25 = \$317	\$279	\$38	Earnings exceeded 1/3 weekly benefit amount
<b>39-09</b>	\$292 + \$25 = \$317	\$0	\$317	Earnings exceeded weekly benefit amount
<b>40-09</b>	\$292 + \$25 = \$317	\$0	\$317	Earnings exceeded weekly benefit amount
<b>42-09</b>	\$292 + \$25 = \$317	\$0	\$317	Earnings exceeded weekly benefit amount
<b>43-09</b>	\$292 + \$25 = \$317	\$0	\$317	Earnings exceeded weekly benefit amount
<b>44-09</b>	\$292 + \$25 = \$317	\$252	\$65	Earnings exceeded 1/3 weekly benefit amount
<b>45-09</b>	\$292 + \$25 = \$317	\$215	\$102	Earnings exceeded 1/3 weekly benefit amount
<b>48-09</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount
<b>49-09</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly



				benefit amount	
<b>50-09</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount	
<b>51-09</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount	
<b>52-09</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount	
<b>01-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount	
<b>02-10</b>	\$230 + \$25 = \$255	\$0	\$255	Not available for work	Incarcerated in WA County Jail for three days
<b>03-10</b>	\$230 + \$25 = \$255	\$0 (note: \$63 earnings insufficient to reduce WBA)	\$255	Not available for work	Incarcerated in WA County Community Corrections Center
<b>04-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount & Not available for work	
<b>05-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount &	

				Not available for work	
<b>06-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount & Not available for work	
<b>07-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount & Not available for work	
<b>08-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount & Not available for work	
<b>09-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount & Not available for work	
<b>10-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount & Not available for work	
<b>13-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount	Not Incarcerated
<b>14-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly	

				benefit amount	
<b>15-10</b>	\$230 + \$25 = \$255	\$0	\$255	Earnings exceeded weekly benefit amount	
*** Claimant incarcerated in WA County Jail from April 19, 2010 until on or about May 26, 2010 ***					
<b>22-10</b>	\$292 + \$25 = \$317	\$0	\$317	Disqualified from receiving benefits	Not Incarcerated
<b>23-10</b>	\$292 + \$25 = \$317	\$0	\$317	Disqualified from receiving benefits	
<b>24-10</b>	\$292 + \$25 = \$317	\$0	\$317	Disqualified from receiving benefits	
			<b>Total overpayment: \$8,760</b>		

**CONCLUSIONS AND REASONS:** Claimant was overpaid \$8,760 and is liable under 657.310 to repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable, and such overpayment may be collected by the Department at any time. Claimant is also subject to a \$1,314 monetary penalty and a 52-week penalty disqualification from receipt of future benefits.

**Remuneration.** An individual is not eligible to receive unemployment insurance benefits if they are not unemployed. ORS 657.155(1)(e) (“An *unemployed individual* shall be eligible to receive benefits with respect to any week . . . .”) (emphasis added). Per ORS 657.100(1), an individual is deemed “unemployed”:

in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount.

For each of weeks 47-08, 33-09, 36-09, 39-09, 40-09, 42-09, 43-09, 48-09, 49-09, 50-09, 51-09, 52-09, 01-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, 10-10, 13-10, 14-10, and 15-10, claimant worked for and received earnings from either Torgerson Painting Inc. or Diverse Works that exceeded his weekly benefit amount. At hearing, claimant denied claiming benefits for the weeks at issue, but did not dispute

the earnings figures offered by the Department, which were based on audit information from the two employers. July 7, 2023 Transcript at 8, 11, 29-30, 33. The weight of the evidence supports that the earnings figures offered by the Department reflect the amount of remuneration claimant earned for each of these weeks. Accordingly, for each of these weeks claimant performed services, received remuneration for services performed and was paid more for the services performed than his weekly benefit amount. As a result, claimant was not “unemployed” during any of these weeks within the meaning of ORS 657.100(1) and therefore was not eligible to receive benefits for those weeks.

In contrast, for each of weeks 24-09, 32-09, 37-09, 38-09, 44-09, and 45-09, claimant worked for either Torgerson Painting Inc. or Diverse Works and received earnings in amounts that were less than his weekly benefit amount. Claimant did not dispute the earnings figures offered by the Department for these weeks, which were based on audit information from the two employers. The weight of the evidence supports that the earnings figures offered by the Department reflect the amount of remuneration claimant earned for each of these weeks. The earnings information for these weeks is as follows:

<b>Week</b>	<b>Earnings</b>	<b>Weekly Benefit Amount</b>
<b>24-09</b>	\$246.50	\$292
<b>32-09</b>	\$258.70	\$292
<b>37-09</b>	\$288.00	\$292
<b>38-09</b>	\$135.00	\$292
<b>44-09</b>	\$162.00	\$292
<b>45-09</b>	\$198.64	\$292

Claimant’s weekly benefit amounts for these weeks were subject to a reduction based on the earnings claimant received during each week. ORS 657.150(6) provides:

An eligible unemployed individual who has employment in any week shall have the individual’s weekly benefit amount reduced by the amount of earnings paid or payable that exceeds whichever is the greater of the following amounts:

- (a) Ten times the minimum hourly wage established by the laws of this state; or
- (b) One-third of the individual’s weekly benefit amount.

Applying ORS 657.150(6) to week 24-09, claimant’s weekly benefit amount was \$292 and the applicable minimum wage for Oregon was \$8.40 per hour.<sup>3</sup> One-third of claimant’s \$292 weekly benefit

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<sup>3</sup> Per ORS 653.025(1)(b), the minimum wage during the period of January 1, 2004 to June 30, 2016 was calculated by the Commissioner of the Bureau of Labor and Industries, adjusted for inflation. More likely than not, the minimum wage in Oregon was \$8.40 in 2009. See *The Oregonian*, Oregon’s Minimum Wage : 1968 to 2014, available at, [https://www.oregonlive.com/business/2014/01/oregons\\_minimum\\_wage\\_1968\\_to\\_2.html](https://www.oregonlive.com/business/2014/01/oregons_minimum_wage_1968_to_2.html). EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our

amount is \$97.33. Ten times the \$8.40 per hour minimum wage is \$84.00. The greater of those two amounts is \$97.33. The amount of claimant's \$246.50 earnings for week 24-09 that exceeded \$97.33 was \$149.17. Claimant's \$292 weekly benefit amount for week 24-09 is therefore reduced dollar for dollar by \$149.17, which equals \$142.83 and is rounded down to the next lower full dollar amount.<sup>4</sup> Thus, claimant's reduced weekly benefit amount for week 24-09 was \$142, plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total reduced benefit amount of \$167.

Applying ORS 657.150(6) to week 32-09, the greater of ten times the \$8.40 minimum wage and one-third of claimant's \$292 weekly benefit amount, is the latter figure, which equals \$97.33. The amount of claimant's \$258.70 earnings for week 32-09 that exceeded \$97.33 was \$161.37. Claimant's \$292 weekly benefit amount for week 32-09 is therefore reduced dollar for dollar by \$161.37, which equals \$130.63 and is rounded down to \$130. Thus, claimant's reduced weekly benefit amount for week 32-09 was \$130, plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total reduced benefit amount of \$155.

Applying ORS 657.150(6) to week 37-09, the greater of ten times the \$8.40 minimum wage and one-third of claimant's \$292 weekly benefit amount, is the latter figure, which equals \$97.33. The amount of claimant's \$288.00 earnings for week 37-09 that exceeded \$97.33 was \$190.67. Claimant's \$292 weekly benefit amount for week 37-09 is therefore reduced dollar for dollar by \$190.67, which equals \$101.33 and is rounded down to \$101. Thus, claimant's reduced weekly benefit amount for week 37-09 was \$101, plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total reduced benefit amount of \$126.

Applying ORS 657.150(6) to week 38-09, the greater of ten times the \$8.40 minimum wage and one-third of claimant's \$292 weekly benefit amount, is the latter figure, which equals \$97.33. The amount of claimant's \$135.00 earnings for week 38-09 that exceeded \$97.33 was \$37.67. Claimant's \$292 weekly benefit amount for week 38-09 is therefore reduced dollar for dollar by \$37.67, which equals \$254.33 and is rounded down to \$254. Thus, claimant's reduced weekly benefit amount for week 38-09 was \$254, plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total reduced benefit amount of \$279.

Applying ORS 657.150(6) to week 44-09, the greater of ten times the \$8.40 minimum wage and one-third of claimant's \$292 weekly benefit amount, is the latter figure, which equals \$97.33. The amount of claimant's \$162.00 earnings for week 44-09 that exceeded \$97.33 was \$64.67. Claimant's \$292 weekly benefit amount for week 44-09 is therefore reduced dollar for dollar by \$64.67, which equals \$227.33 and is rounded down to \$227. Thus, claimant's reduced weekly benefit amount for week 44-09 was \$227, plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total reduced benefit amount of \$252.

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mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

<sup>4</sup> ORS 657.152 states, "[n]otwithstanding any other provision of this chapter to the contrary, any amount of unemployment compensation payable to any individual for any week if not an even dollar amount, shall be rounded to the next lower full dollar amount."

Applying ORS 657.150(6) to week 45-09, the greater of ten times the \$8.40 minimum wage and one-third of claimant's \$292 weekly benefit amount, is the latter figure, which equals \$97.33. The amount of claimant's \$198.64 earnings for week 45-09 that exceeded \$97.33 was \$101.31. Claimant's \$292 weekly benefit amount for week 45-09 is therefore reduced dollar for dollar by \$101.31, which equals \$190.69 and is rounded down to \$190. Thus, claimant's reduced weekly benefit amount for week 45-09 was \$190, plus the additional \$25 pursuant to the American Recovery and Reinvestment Act of 2009, for a total reduced benefit amount of \$215.

Note, additionally, that claimant received earnings that exceeded one-third of his weekly benefit amount for week 35-09 as well. In the case of that week, claimant's earnings would have reduced his \$292 weekly benefit amount dollar for dollar to \$209, plus the \$25 Recovery Act supplement, for a total reduced benefit amount of \$234. However, because claimant was incarcerated during week 35-09 for about seven hours, the Department issued decision # 120609, concluding that claimant was not available for work that week, which administrative decision is final and binding as a matter of law. *See* Exhibit 7 at 45-46. The Department therefore deemed claimant ineligible for the entire \$317 benefit amount for week 35-09 on the basis of claimant being unavailable to work.

Similarly, claimant received \$63 in earnings for week 03-10. However, this amount did not exceed one-third of claimant's weekly benefit amount or ten times the minimum wage, so claimant's weekly benefit amount was not subject to an ORS 657.150(6) reduction. The basis of claimant's ineligibility for week 03-10 was that he was incarcerated in the Washington Community Corrections Center that week, and, per decision # 101957, which is final and binding as a matter of law, claimant was therefore not available for work that week and ineligible to receive benefits. *See* Exhibit 7 at 47-48.

**Overpayment.** ORS 657.310(1)(a) 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. *Id.*

At hearing, claimant denied claiming the weeks at issue or receiving payment of the benefits. July 7, 2023 Transcript at 27, 28, 30, 31, 35-36. As an initial matter, claimant conceded filing the initial claim and made a partial concession supporting the conclusion that he claimed the first week at issue, week 47-08. Claimant testified that he filed the initial claim for benefits on November 24, 2008, although he also testified inconsistently that he could not recollect doing so. July 7, 2023 Transcript at 26, 46. Further, the Department submitted documentary evidence of a Department letter inquiring about claimant's hours and earnings for week 47-08, which bears claimant's signature, a short message from him, and encloses the requested earnings information. *See* Exhibit 9 at 1. Claimant testified that he did not recall sending the letter back but conceded that it "sound[ed]" like what claimant "would have done". July 7, 2023 Transcript at 58-59. Given that the letter pertained to earnings information for week 47-08, that claimant admitted that returning the letter is something he would have done, and that the passage of time undermines the reliability of claimant's failure to recollect claiming week 47-08 or returning the letter, the preponderance of evidence supports that claimant claimed that week.

The weight of the evidence also favors the conclusion that claimant claimed the remaining weeks at issue and received the payments for those weeks. First, the Department offered extensive documentary evidence in the form of each of the weekly claim forms for the weeks at issue, which show that claimant claimed the weeks at issue primarily via the Department's online claims system but also via the Department's interactive voice response telephone line. *See* Exhibit 7 at 1-38. This evidence is more reliable than claimant's recollections, given the passage of time since the weeks at issue occurred. Further, while claimant posited at hearing that he could not have claimed the weeks at issue because he was incarcerated, review of the specific times claimant was actually in custody reveals that he had ample opportunity to claim despite unavailability due to incarceration being a basis for his ineligibility for many of the weeks at issue. July 7, 2023 Transcript at 35. Specifically, claimant was in the Washington County Jail for about seven hours during week 35-09, and for three days during week 02-10, and was in the Washington County Community Corrections Center from weeks 03-10 through 10-10. The seven hour and three day stints in jail were too short in duration to have precluded claimant from claiming.

Although claimant's stay in the Washington County Community Corrections Center was lengthier, claimant likened this facility in his testimony to a "halfway house" where he was free to continue working for Diverse Works and conceded that he had access to file claims while staying there. July 7, 2023 Transcript at 41-42. Furthermore, the Department witness testified, unrebutted, that claimant had access to his cell phone for claiming while he was in the Washington County Community Corrections Center. July 7, 2023 Transcript at 53. Note that claimant was also in the Washington County Jail from April 19, 2010 until on or about May 26, 2010. However, none of the weeks at issue occurred during that period, so that time in jail could not have interfered with claimant's ability to claim. In addition, claimant's jailhouse conversation with his girlfriend from on or about April 19, 2010, in which he told his girlfriend to claim his benefits and suggested that she had done so previously, shows that, even if incarceration had been a barrier to claiming, claimant had the opportunity to claim with the assistance of his girlfriend. Although claimant denied giving his girlfriend permission to file claims on his behalf, he admitted he could have had a conversation with her about unemployment benefits while he was in jail on or about April 19, 2010. July 7, 2023 Transcript at 38, 34. Considering the record evidence in its totality, it is more likely than not that claimant claimed benefits for the weeks at issue and received payment (or, in the case of week 47-08, waiting week credit) for each of the weeks.

Turning to the matter of whether claimant received benefits to which he was not entitled for the weeks at issue, claimant received \$292 for week 48-08 to which he was not entitled. The record shows that claimant reported earning \$136 for week 47-08 when he actually earned \$323 from the employer Torgerson Painting Inc. Claimant's inaccurate reporting of an earnings figure for week 47-08 that did not exceed his weekly benefit amount caused the Department to give claimant waiting week credit for week 47-08. This had the effect of claimant receiving benefits for week 48-08 to which he was not entitled because claimant received \$292 for week 48-08, when week 48-08 should have been credited as claimant's waiting week. Because claimant's overpayment for week 48-08 was his fault for misreporting earnings, ORS 657.310 governs the overpayment of \$292 for week 48-08.

Similarly, for each of weeks 33-09, 36-09, 39-09, 40-09, 42-09, and 43-09, claimant was overpaid \$292 plus the \$25 Recovery Act supplement, for a total of \$317 each week because he failed to report earnings that exceeded his \$292 weekly benefit amount. ORS 657.310 governs the overpayment of these weeks because claimant was at fault for failing to report his earnings.

Likewise, for each of weeks 48-09, 49-09, 50-09, 51-09, 52-09, 01-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, 10-10, 13-10, 14-10, and 15-10, claimant was overpaid \$230 plus the \$25 Recovery Act supplement, for a total of \$255 each week because he failed to report earnings that exceeded his \$230 weekly benefit amount. ORS 657.310 governs the overpayment of these weeks because claimant was at fault for failing to report his earnings.

Also, claimant was overpaid \$150 for week 24-09 because he was paid \$317 for that week but failed to report earnings that by operation of ORS 657.150(6) reduced his benefit amount to \$167. Claimant was overpaid \$162 for week 32-09 because he was paid \$317 for that week but failed to report earnings that by operation of ORS 657.150(6) reduced his benefit amount to \$155. Claimant was overpaid \$191 for week 37-09 because he was paid \$317 for that week but failed to report earnings that by operation of ORS 657.150(6) reduced his benefit amount to \$126. Claimant was overpaid \$38 for week 38-09 because he was paid \$317 for that week but failed to report earnings that by operation of ORS 657.150(6) reduced his benefit amount to \$279. Claimant was overpaid \$65 for week 44-09 because he was paid \$317 for that week but failed to report earnings that by operation of ORS 657.150(6) reduced his benefit amount to \$252. Claimant was overpaid \$102 for week 45-09 because he was paid \$317 for that week but failed to report earnings that by operation of ORS 657.150(6) reduced his benefit amount to \$215. ORS 657.310 governs the overpayment of these weeks because claimant was at fault for failing to report his earnings.

Claimant was also overpaid \$317 for week 35-09 because claimant was incarcerated during week 35-09 for about seven hours, and per decision # 120609, which is final and binding as a matter of law, claimant was therefore not available for work that week. *See* Exhibit 7 at 45-46. ORS 657.310 governs the overpayment of week 35-09 because the record shows claimant received payment for that week after misstating on his weekly claim form that he was available for work during week 35-09. *See* Exhibit 7 at 6. Claimant was also overpaid \$255 for week 02-10 because claimant was incarcerated in the Washington County Jail for three days during week 02-10, and per decision # 101957, which is final and binding as a matter of law, claimant was therefore not available for work that week. ORS 657.310 governs the overpayment of week 02-10 because the record shows claimant received payment for that week after misstating on his weekly claim form that he was available for work during week 02-10. *See* Exhibit 7 at 22. Claimant was also overpaid \$255 for week 03-10 because claimant was incarcerated in the Washington County Community Corrections Center during week 03-10, and per decision # 101957, which is final and binding as a matter of law, claimant was therefore not available for work that week. ORS 657.310 governs the overpayment of week 03-10 because the record shows claimant received payment for that week after misstating on his weekly claim form that he was available for work during week 03-10. *See* Exhibit 7 at 23.

Finally, as to weeks 22-10, 23-10, and 24-10, claimant was paid \$317 to which he was not entitled for each of these weeks because, per decision # 165103, which is final and binding as a matter of law, claimant was discharged for misconduct and therefore was disqualified from receiving benefits effective April 18, 2010. Weeks 22-10, 23-10, and 24-10 were the weeks of May 30, 2010 through June 19, 2010. Accordingly, claimant was paid benefits to which he was not entitled for weeks 22-10, 23-10, and 24-10, and the overpayment is governed by ORS 657.310 because, as of April 18, 2010, claimant was disqualified from receiving benefits and not eligible to receive benefits for weeks 22-10, 23-10, and 24-10.



Thus, the record shows that claimant received benefits to which he was not entitled for weeks 48-08, 24-09, 32-09, 33-09, 35-09, 36-09, 37-09, 38-09, 39-09, 40-09, 42-09, 43-09, 44-09, 45-09, 48-09, 49-09, 50-09, 51-09, 52-09, 01-10, 02-10, 03-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, 10-10, 13-10, 14-10, 15-10, 22-10, 23-10, and 24-10 in a total amount of \$8,760. Claimant's \$8,760 overpayment is governed by ORS 657.310.

**Willful Misrepresentation and Penalty Disqualification.** Under ORS 657.215, “[a]n individual is disqualified for benefits for a period not to exceed 52 weeks whenever the Director of the Employment Department finds that the individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits[.]” The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052, which provides, in pertinent part:

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

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To calculate the number of penalty weeks to be assessed, it is necessary to omit from the numerator claimant's overpayments from certain weeks in which the record fails to show that he made a false statement willfully to obtain benefits. First, the \$292 claimant improperly received for week 48-08, when that week should have been treated as a waiting week, was not shown to have been the result of a willful misrepresentation by claimant to obtain benefits. Claimant reported \$136 in earnings for week 47-08, when he in fact earned \$323 that week, which had the effect of improperly assigning waiting week credit to week 47-08 and in turn enabled him to receive \$292 for week 48-08. Reporting \$136 instead of \$323 may have been an error. Exhibit 9 shows claimant as listing 8 hours of work and \$136 of earnings for week 47-08 in response to the Department's inquiry, with claimant's signature and a short message enclosed. The record fails to show that claimant enclosed this inaccurate information willfully to obtain benefits.

Similarly situated are weeks 35-09, 02-10, and 03-10, when claimant was in Washington County jail for seven hours (week 35-09) and three days (week 02-10), respectively, and when claimant was in the Washington County Community Corrections Center but did not earn remuneration from Diverse Works that exceeded one-third of his weekly benefit amount (week 03-10). Though it was a misstatement for claimant to report on his weekly claim forms for each of these weeks that he was available for work, and each misstatement caused claimant to receive benefits for those weeks to which he was not entitled, it is

not evident that the misstatements were made willfully to obtain benefits. *See* Exhibit 7 at 6, 22, and 23. For example, an individual might genuinely believe they are available for work in a week when they are in jail for merely a matter of hours, as claimant was during week 35-09. Likewise, claimant may have sincerely believed he was available for work during week 03-10, since although he was incarcerated, he was housed at a facility that permitted him to work and in fact he did work for Diverse Works that week. The record fails to show that claimant misstated his availability status for weeks 35-09, 02-10, and 03-10 willfully to obtain benefits.

Additionally, the record fails to show that claimant made misrepresentations willfully to obtain benefits with respect to weeks 22-10, 23-10, and 24-10. Claimant was not entitled to receive benefits for those weeks because Diverse Works discharged him for misconduct on April 21, 2010 and claimant thereby became disqualified from receiving benefits effective April 18, 2010 by operation of decision # 165103. However, the weekly claim forms claimant submitted for those weeks asked merely whether claimant was fired or suspended from a job “last week.” Exhibit 7 at 35, 36, 38. As weeks 22-10, 23-10, and 24-10 were the weeks of May 30, 2010 through June 19, 2010, the claim form questions do not capture whether claimant was discharged from a job on April 21, 2020. The record therefore fails to show that claimant made willful misrepresentations to obtain benefits for weeks 22-10, 23-10, and 24-10.

However, for each of weeks 24-09, 32-09, 33-09, 36-09, 37-09, 38-09, 39-09, 40-09, 42-09, 43-09, 44-09, 45-09, 48-09, 49-09, 50-09, 51-09, 52-09, 01-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, 10-10, 13-10, 14-10, and 15-10, the claim forms asked claimant if he worked and to report the number of hours that he worked and his gross earnings for the week. Exhibit 7 at 3-34. Yet, for each of these weeks, claimant answered that he did not work and reported no hours or earnings. Exhibit 7 at 3-34.

The weight of the evidence supports that each of these misrepresentations were made willfully to obtain benefits. The Department made claimant aware of his duty to report earnings both via each weekly claim form and in a letter it sent to claimant after he claimed the first week at issue, week 47-08. Exhibit 9 at 1. Shortly after he claimed week 47-08, claimant returned the letter, signed, and with his hours and earnings information for week 47-08 enclosed. Exhibit 9 at 1. This shows a specific awareness on claimant’s part of his obligation to report earnings as of late 2008 and indicates that his failure to do so beginning with week 24-09 was intentional and not a mistake. While claimant denied claiming any of the weeks at issue, and therefore also denied making willful misrepresentations to obtain benefits for those weeks, claimant’s denials are entitled to little weight. July 7, 2023 Transcript at 27, 28, 30, 31, 35-36. The passage of time undermines the reliability of claimant’s recollections. Claimant’s professed inability to recall claiming or misrepresenting his earnings information when claiming is also undermined by evidence of claimant’s jailhouse conversation in which claimant urged his girlfriend to claim on his behalf and suggested that she had done so previously. *See* Exhibit 8 at 1.

Accordingly, the numerator in the penalty weeks calculation is the \$8,760 total overpayment less the overpayments flowing from weeks 48-08 (\$292), 35-09 (\$317), 02-10 (\$255), 03-10 (\$255), 22-10 (\$317), 23-10 (\$317), and 24-10 (\$317), which equals \$6,690. The maximum Oregon weekly benefit amount in effect during the first effective week of claimant’s initial claim was \$463.<sup>5</sup> \$6,690 divided by

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<sup>5</sup> EAB has taken notice of this fact, which is contained in Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

\$463 equals approximately 14.45. Multiplying that number by four and rounding up yields 58. Accordingly, claimant is assessed the statutory maximum of 52 penalty weeks.

**Monetary Penalty.** Under ORS 657.310(2)(a), an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. The percentage of the monetary penalty is determined by applying the provisions of OAR 471-030-0052(7), which provides, in pertinent part:

The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:

\* \* \*

(d) For the seventh or greater occurrence within 5 years of the occurrence for which a penalty is being assessed, 30 percent of the total amount of benefits the individual received but to which the individual was not entitled.

However, at the time of the weeks at issue, 2008, 2009, and 2010, the Department was authorized only to assess a monetary penalty totaling 15% of the benefits received by an individual due to fraud. *See* September 25, 2013 Memorandum from George Berriman to UI Staff (“Currently, claimants found to have committed fraud to obtain unemployment benefits are assessed a monetary penalty totaling 15% of the benefits they received. . . . New federal legislation requires a separate 15% penalty be assess to claimants found to have committed fraud. . . the new legislation takes effect October 1, 2013 and will affect fraud cases that include weeks 40/13 and later”).

Here, claimant willfully made false statements to obtain benefits each of weeks 24-09, 32-09, 33-09, 36-09, 37-09, 38-09, 39-09, 40-09, 42-09, 43-09, 44-09, 45-09, 48-09, 49-09, 50-09, 51-09, 52-09, 01-10, 04-10, 05-10, 06-10, 07-10, 08-10, 09-10, 10-10, 13-10, 14-10, and 15-10. This amounts to 28 occurrences. Applying the authority applicable prior to 2013, however, claimant is liable for only a 15% monetary penalty of the total amount of benefits received but to which he was not entitled. Fifteen percent of \$6,690 is \$1,003.50. Accordingly, claimant is liable for a \$1,003.50 monetary penalty.

In summary, Claimant was overpaid \$8,760 and is liable under ORS 657.310 to repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable, and such overpayment may be collected by the Department at any time. Claimant is also subject to a \$1,003.50 monetary penalty and a 52-week penalty disqualification from receipt of future benefits.

**DECISION:** Order No. 23-UI-230489 is set aside, as outlined above.

S. Serres and A. Steger-Bentz;

D. Hettle, not participating.

**DATE of Service: September 14, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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**

ទោរទៅផ្នែក – តម្រូវការនេះមិនមែនជាបញ្ហាបច្ចេកទេសទេ វាគឺជាបញ្ហាបច្ចេកទេសនៃការងាររបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**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، 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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