

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1005**

*Reversed*  
*No Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On December 8, 2021, 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 an overpayment of \$3,926 in regular unemployment insurance (regular UI), \$906 in Pandemic Emergency Unemployment Compensation (PEUC), \$10,200 in Federal Pandemic Unemployment Compensation (FPUC), and \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay, a \$4,509.60 monetary penalty, and a 52-week disqualification from future benefits. Claimant filed a timely request for hearing. On August 7, 2023, ALJ Nyberg conducted a hearing, and on August 17, 2023 issued Amended Order No. 23-UI-233623,<sup>1</sup> affirming the December 8, 2021 administrative decision.<sup>2</sup> On September 5, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACTS:** (1) Prior to March 28, 2020, claimant worked as a school teacher, a teacher at a “private shop,” and a home care worker for an autistic teenager working as an employee of the teenager’s mother but paid through the Oregon Department of Human Services (DHS). Transcript at 14. On or about March 28, 2020, the schools that employed claimant closed due to COVID-19 restrictions, and claimant was laid off from his teaching jobs indefinitely. Claimant continued to work providing care for the teenager.

(2) On March 28, 2020, claimant filed an initial claim for regular UI benefits. Claimant had never before filed a claim for unemployment insurance. On multiple occasions after filing his initial claim, claimant called the Department, and received information that his claim and any questions he was required to

<sup>1</sup> ALJ Nyberg issued Amended Order No. 23-UI-233623 to correct computational errors in Order No. 23-UI-233346, the original hearing order issued in this matter. Amended Order No. 23-UI-233623 at 1.

<sup>2</sup> Although Amended Order No. 23-UI-233623 affirmed the December 8, 2021 administrative decision, the order acknowledged that the Department had subsequently waived any liability for claimant to repay the LWA benefits he received. Amended Order No. 23-UI-233623 at 9.

answer when filing weekly claims were to relate exclusively to the teaching jobs he had lost, not his home care work. On some of these occasions, claimant's home care client's mother was present and heard Department representatives advise claimant to answer based only on the teaching jobs he had lost.

(3) The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of \$151 and a first effective week of March 22 through 28, 2020 (week 13-20). Thereafter, claimant claimed benefits for each of the weeks of March 29 through November 7, 2020 (weeks 14-20 through 45-20). These are the weeks at issue.

(4) Claimant received earnings from his home care work that exceeded his weekly benefit amount for each of the weeks at issue. The weekly claim form for each of the weeks at issue asked claimant if he had worked during the week claimed and prompted claimant to list the hours worked and amount of earnings received for the week. For each of the weeks at issue, claimant answered "no" to the question "did you work?" and did not list his earnings from his home care work because he believed the questions related exclusively to the teaching jobs he had lost. Transcript at 8.

(5) In early July 2020, claimant also claimed benefits for the first effective week of his claim, the week of March 22 through 28, 2020 (week 13-20). When he did so, he listed that he worked 40 hours that week and received \$600 in earnings. Because these earnings exceeded claimant's weekly benefit amount, the Department did not pay claimant benefits for week 13-20.

(6) In early November 2020, claimant called the Department and learned he was supposed to answer the weekly claim questions both as to the teaching jobs he had lost, and as to his home care work. Once claimant learned this, he stopped claiming benefits.

(7) The Department paid claimant \$151 per week in regular UI benefits for each of weeks 14-20 through 39-20, for a total of \$3,926 in regular UI benefits. The Department paid claimant \$151 per week in PEUC benefits for each of weeks 40-20 through 45-20, for a total of \$906 in PEUC benefits. The Department paid claimant \$600 per week in FPUC benefits for each of weeks 14-20 through 30-20, for a total of \$10,200. The Department paid claimant \$300 per week in LWA benefits for each of week 31-20 through 36-20, for a total of \$1,800 of LWA benefits. Each of the payments the Department made to claimant for the weeks at issue were made on or before November 9, 2020.<sup>3</sup>

(8) In August 2021, the Department audited claimant's claim and received claimant's earnings information for each of the weeks at issue for the home care work he performed from DHS. Because these earnings exceeded claimant's weekly benefit amount each week, claimant was not considered unemployed during the weeks at issue,<sup>4</sup> and therefore ineligible for the benefits he had received. The Department considered claimant's failure to report the home care earnings to be a willful misrepresentation made to obtain benefits.

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<sup>3</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

<sup>4</sup> See ORS 657.100(1).

(9) On December 8, 2021, more than a year after the Department paid claimant for the weeks at issue, the Department issued the December 8, 2021 administrative decision.

**CONCLUSIONS AND REASONS:** The Department cannot amend its decisions to allow payment of benefits for the weeks at issue by assessing an overpayment for those weeks.

ORS 657.267 provides:

(1) *An authorized representative shall promptly examine 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.* Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. *Notice of the decision need not be given to the claimant if the claim is allowed* but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.

(2) If the claim is denied under any provision of ORS 657.176, written notice of the decision must be given to the employing unit, or to the agent of the employing unit, that, in the opinion of the Director of the Employment Department, is most directly involved with the facts and circumstances relating to the disqualification.

(3) Notice of a decision that was wholly or partially based on information filed with the director in writing within 10 days after the notice provided for in ORS 657.265 must be given to any employing unit or agent of the employing unit that filed the information.

(4) *If a decision to allow payment made pursuant to this section does not require notice, that decision may be amended by an authorized representative.* The amendment must be made by written notice informing the recipient of the right of appeal pursuant to ORS 657.269. *The amendment must be issued within one year of the original decision to allow payment, except in cases of alleged willful misrepresentation or fraud.* A decision requiring notice, made pursuant to this section, may be amended unless it has become a final decision under ORS 657.269.

(Emphasis added.)

The order under review concluded that during the weeks at issue, claimant was overpaid \$3,926 in regular UI, \$906 in PEUC, \$10,200 in FPUC and \$1,800 in LWA benefits, and that claimant was required to repay those amounts to the Department except for the LWA overpayment, which the Department waived. Amended Order No. 23-UI-233623 at 9. However, the Department cannot amend its original decisions to allow payment by assessing an overpayment for those weeks.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each of the claims on or before November 9, 2020. Because the decisions to allow payment did not require notice under ORS 657.267, the Department could only amend the decisions to allow payment within one year of the decisions, in the absence of “alleged willful misrepresentation or fraud.” ORS 657.267(4). The December 8, 2021 administrative decision amended the original decisions to allow payment for weeks 14-20 through 45-20 because it concluded that claimant was overpaid benefits for those weeks due to excess earnings. The December 8, 2021 administrative decision was issued more than one year after the last decision allowing payment on November 9, 2020. Accordingly, the Department cannot make such an amendment, except in cases of willful misrepresentation or fraud.

The record does not establish that claimant’s failure to report his earnings from his home care work amounted to willful misrepresentation or fraud. More likely than not, claimant made the omissions relating to his home care work and earnings because of a misunderstanding, and not willfully to obtain benefits. When claimant filed his initial claim in this case, he had never before filed a claim for unemployment insurance. On multiple occasions after filing his initial claim, claimant called the Department and received information that his claim and any questions he was required to answer when filing weekly claims were to relate exclusively to the teaching jobs he had lost, not his home care work. At hearing, claimant offered the testimony of the mother of the teenager for whom he provided care, and that witness testified to overhearing Department representatives advise claimant to answer claim questions based only on the teaching jobs he had lost. Transcript at 24.

The witness for the Department asserted at hearing that the 40 hours claimant worked, and the excess earnings claimant received for week 13-20 (which he reported when he claimed that week) was from claimant’s home care work. Transcript at 7; Exhibit 1 at 26. The Department witness reasoned that this demonstrated that claimant knew the weekly claim form questions pertained to all the work claimant performed. The witness posited that claimant realized that he would not get paid if he reported his excess earnings from the home care work, and that claimant then failed to report the home care earnings that exceeded his weekly benefit amount for the weeks at issue deliberately to receive benefits to which he was not entitled. Transcript at 7.

However, the Department witness did not explain why she believed that the excess earnings claimant reported for week 13-20 was from his home care work. Week 13-20, the first effective week of claimant’s claim, ran from March 22 through March 28, 2020, and preceded the Saturday March 28, 2020 date on which claimant filed his initial claim after losing his teaching jobs. Therefore, it is plausible that claimant’s earnings for week 13-20 related to a teaching job that he worked that week but then lost when the schools that employed claimant closed. Documentary evidence offered by the Department shows only that claimant reported earning \$600 for week 13-20, but does not specify the source of the earnings. Exhibit 1 at 26.<sup>5</sup> To reason that the information claimant reported for week 13-20 was intended to relate to home care work runs counter to the earnings audit completed by DHS, which lists claimant as having worked 32.75 hours and earned \$491.25 from home care work for week 13-20. Exhibit 1 at 11. This does not match the 40 hours of work and \$600 claimant reported for week 13-20. If

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<sup>5</sup> This evidence also shows that claimant claimed week 13-20 on July 6, 2020, a point in time midway through claimant’s claiming sequence, rather than contemporaneously with his March 28, 2020 initial claim. This does not mesh with the Department witness’s theory that claimant’s failure to report his home care earnings for each of the weeks at issue followed in chronological order from claimant’s experience claiming and being denied benefits for week 13-20. Exhibit 1 at 26.

claimant had intended to convey hours and earnings information for week 13-20 that related to his home care work, one would expect that information to be the same as the information DHS provided for week 13-20. Moreover, at hearing, neither the ALJ nor the Department witness ever asked claimant whether the \$600 was from his home care work and, if it was, to explain why he would report his home care earnings then but not for any of the weeks at issue. Though never asked about week 13-20 in particular, claimant testified consistently that during the entire time he claimed benefits, which included week 13-20, he answered the claim questions believing they pertained only to the teaching jobs he lost. *See, e.g.*, Transcript at 21 (“I answered with two teaching[] positions throughout the whole thing.”).

Thus, the Department witness’s assertion that the hours and earnings claimant reported for week 13-20 related to claimant’s home care work is not sufficient to establish that claimant’s failure to report the home care earnings for the weeks at issue was a willful misrepresentation. Accordingly, the Department has not established that this is a case of willful misrepresentation or fraud, and the one-year limitation on amending decisions under ORS 657.267(4) therefore applies.

For these reasons, the Department cannot amend the original decisions allowing the payment of benefits for the weeks at issue with a decision assessing an overpayment for those weeks that claimant must repay.

**DECISION:** Order No. 23-UI-233623 is set aside, as outlined above.

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

**DATE of Service: October 13, 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**

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.