

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1035**

*Reversed*  
*No Overpayment*

**PROCEDURAL HISTORY:** On June 23, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received a net amount of \$3,168 in Pandemic Unemployment Assistance (PUA) benefits to which she was not entitled, and assessing an overpayment in that amount (decision # 130700).<sup>1</sup> Claimant filed a timely request for hearing. On August 8, 2023, ALJ Adamson conducted a hearing, and on August 23, 2023 issued Order No. 23-UI-234023, modifying decision # 130700 by concluding that claimant received a net amount of \$3,168 in PUA benefits to which she was not entitled, and assessing an overpayment in that amount that she was liable to repay to the Department pursuant to ORS 657.310.<sup>2</sup> On September 12, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On June 15, 2019, claimant filed an initial application for unemployment insurance benefits. The Department determined the claim was monetarily valid for regular unemployment insurance (regular UI) benefits with a weekly benefit amount (WBA) of \$146. Claimant subsequently exhausted these regular UI benefits.

(2) On July 31, 2020, claimant filed an initial application for PUA benefits. The Department initially determined the claim was monetarily valid with a WBA of \$205 per week. Claimant filed weekly PUA

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<sup>1</sup> Decision # 130700 stated that this conclusion was based on a determination that claimant was ineligible for PUA benefits for the weeks at issue because she was eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks at issue. Despite this determination being contained within decision # 130700, claimant's eligibility for PUA benefits was not noticed as an issue to be decided at the hearing on decision # 130700. Further, decision # 130700 alleged that claimant received a total of \$4,920 in PUA benefits to which she was not entitled but that \$1,752 of that amount was repaid via offset from other benefits prior to the issuance of the decision, resulting in the assessment of a net PUA overpayment of \$3,168. Decision # 130700 did not state that claimant was required to repay, or liable to repay through deduction from future benefits, the net overpayment.

<sup>2</sup> Although Order No. 23-UI-234023 stated that it affirmed decision # 130700, it modified that decision by concluding that claimant was liable to repay the overpayment pursuant to ORS 657.310.

claims, but was not paid PUA benefits, for the weeks of July 5, 2020, through March 13, 2021 (weeks 28-20 through 10-21).<sup>3</sup>

(3) On February 19, 2021, the Department served a Notice of Determination for PUA concluding that claimant was ineligible for PUA benefits effective March 15, 2020. Claimant filed a timely request for hearing with the Office of Administrative Hearings (OAH).<sup>4</sup>

(4) On April 23, 2021, OAH issued Order No. 21-UI-165451, affirming the February 19, 2021, PUA Determination by concluding that claimant was ineligible to receive PUA benefits for the weeks including July 5, 2020 through April 10, 2021 (weeks 28-20 through 14-21) because she was eligible to receive PEUC benefits during those weeks.<sup>5</sup>

(5) On April 29, 2021, the Department issued decision # 90630, concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective May 24, 2020. On May 19, 2021, decision # 90630 became final without claimant having filed a request for hearing. On May 20, 2021, claimant filed a late request for hearing on decision # 90630. Afterwards, the Department determined that claimant had become eligible to receive PUA benefits as a result of being disqualified from regular UI benefits, and by extension PEUC benefits, based on decision # 90630.<sup>6</sup>

(6) Claimant claimed PUA benefits for the weeks including March 14, 2021, through August 28, 2021 (weeks 11-21 through 34-21). These are the weeks at issue. The Department reopened claimant's PUA claim effective week 11-21 and paid claimant \$205 in PUA benefits for each of these 24 weeks, totaling \$4,920. Each of these payments were made after April 29, 2021, and on or before September 7, 2021.<sup>7</sup>

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<sup>3</sup> EAB has taken notice of this fact which is 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> EAB has taken notice of this fact which is contained in Employment 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.

<sup>5</sup> EAB has taken notice of this fact which is contained in Employment 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.

<sup>6</sup> EAB has taken notice of these facts which are contained in Employment 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 facts will remain in the record.

<sup>7</sup> EAB has taken notice of this fact which is contained in Employment 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.

(7) On April 12, 2023, OAH issued Order No. 23-UI-221792, allowing claimant's late request for hearing on decision # 90630 and reversing that decision on the merits by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation. Based on this order, the Department determined that claimant was eligible for PEUC benefits for the weeks at issue, and filed weekly PEUC claims on her behalf for the weeks during that period in which claimant had not already claimed regular UI or PEUC benefits (weeks 14-21 through 34-21).<sup>8</sup>

(8) On June 20, 2023, the Department found claimant eligible for \$146 per week in PEUC benefits for all of the 24 weeks at issue, totaling \$3,504. \$1,752 was paid to claimant directly while another \$1,752 was retained by the Department to offset overpayment of PUA benefits for the weeks at issue.<sup>9</sup>

(9) On June 23, 2023, the Department issued decision # 130700, concluding that claimant was overpaid a net of \$3,168 in PUA benefits for the weeks at issue. Decision # 130700 stated, "This decision DENIES benefits."<sup>10</sup>

**CONCLUSIONS AND REASONS:** The Department was not authorized to amend the original decisions allowing benefits for weeks 11-21 through 34-21 or assess an overpayment for those weeks. Claimant was not overpaid benefits.

**Lack of Authority to Amend Allowing Decisions for Weeks 11-21 through 34-21.** 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*

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<sup>8</sup> EAB has taken notice of these facts which are contained in Employment 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 facts will remain in the record.

<sup>9</sup> EAB has taken notice of these facts which are contained in Employment 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 facts will remain in the record.

<sup>10</sup> EAB has taken notice of these facts which are contained in Employment 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 facts will remain in the record.

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.)

Order No. 23-UI-234023 concluded that claimant was overpaid a net amount of \$3,168 in PUA benefits for the weeks of March 14, 2021, through August 28, 2021 (weeks 11-21 through 34-21). Order No. 23-UI-234023 at 6-7. The record does not demonstrate that the Department had authority to amend its original decision to allow payment to a decision denying claimant benefits, and therefore assess an overpayment, for those weeks.

The Department made its original decisions under ORS 657.267(1) to allow payment of claimant's weekly claims for PUA benefits for the weeks at issue by paying each of these claims on or before September 7, 2021. Because a decision to allow benefits does not require notice to the claimant pursuant to ORS 657.267(1), the Department may only amend decisions allowing benefits (*i.e.*, by denying benefits) within one year of the decision to allow, in the absence of "alleged willful misrepresentation or fraud." ORS 657.267(4).

The Department issued decision # 130700 on June 23, 2023, assessing a net overpayment of \$3,168. The net overpayment assessed by decision # 130700 was necessarily premised on a denial of PUA benefits for weeks 11-21 through 34-21 also contained in that decision, because the decision concluded that claimant was not entitled to the PUA benefits she received for those weeks and was therefore overpaid. As decision # 130700 amended the decisions allowing PUA benefits for weeks 11-21 through 34-21 by denying PUA benefits for those weeks, it was subject to the one-year limitation set forth in ORS 657.267(4). Because decision # 130700 was not issued within one year of September 7, 2021, the Department was without authorization to issue it, to deny claimant PUA benefits for the weeks at issue, or to assess an overpayment based on receipt of those benefits, in the absence of "alleged willful misrepresentation or fraud."

It should be noted that while Order No. 21-UI-165451, issued April 23, 2021, denied claimant PUA benefits, including for the weeks of March 14, 2021, through April 10, 2021 (weeks 11-21 through 14-21), the Department subsequently reopened the PUA claim and paid PUA benefits for those weeks and each of the other weeks at issue. Accordingly, Order No. 21-UI-165451 did not affect the running of the one-year period in which amendments were allowed under ORS 657.267(4) because the decisions allowing PUA benefits for those weeks were made subsequent to the issuance of that order.

Decision # 130700 did not allege that claimant was denied PUA benefits, or was overpaid PUA benefits, as a result of willful misrepresentation or fraud. Instead, it asserted that claimant was now ineligible for PUA benefits for the weeks at issue because she was eligible for PEUC benefits for the same weeks.<sup>11</sup> This PEUC eligibility for the weeks at issue only occurred when Order No. 23-UI-221792 reversed decision # 90630, cancelling claimant's disqualification from PEUC benefits based on a work separation and retroactively making her eligible for PEUC benefits for the weeks at issue. Decision # 130700 asserted that claimant was overpaid PUA benefits for the weeks at issue simply because of that retroactive PEUC eligibility. Therefore, the Department did not allege, and the record does not show, that claimant was overpaid as a result of willful misrepresentation or fraud. The one-year limitation on amendments found in ORS 657.267(4) is therefore applicable.

For these reasons, the Department lacked authority to amend the original decisions which allowed benefits to decisions denying claimant PUA benefits for weeks 11-21 through 34-21, and in turn, to assess an overpayment of benefits for those weeks. Accordingly, claimant is not assessed an overpayment of benefits.

**DECISION:** Order No. 23-UI-234023 is set aside, as outlined above.

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

**DATE of Service:** October 20, 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.

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<sup>11</sup> 15 U.S.C. § 9021(a)(3)(A)(i) provides, in relevant part, that a "covered individual" for purposes of eligibility to receive PUA benefits is one who "is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title[.]"



# 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 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.