

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1112

*Order No. 23-UI-237689 Modified ~ Request to Reopen Allowed,
Late Request for Hearing Allowed, Overpayment Assessed*

*Order No. 23-UI-237997 Modified ~ Request to Reopen Allowed, Late Request for Hearing Allowed,
Overpayment Waiver Granted*

Order No. 23-UI-237984 Modified ~ Request to Reopen Allowed, Overpayment Waiver Granted

PROCEDURAL HISTORY: On December 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$1,934 in Pandemic Emergency Unemployment Compensation (PEUC) benefits and \$3,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 92517).¹ On January 12, 2022, decision # 92517 became final without claimant having filed a request for hearing. On February 23, 2022, the Department served notice of an administrative decision denying claimant's request for waiver of the PEUC and FPUC overpayments that the Department had previously assessed on December 23, 2021 (decision # 153428). On March 3, 2022, the Department served notice of an administrative decision denying claimant's request for waiver of the PEUC and FPUC overpayments that the Department had previously assessed on December 23, 2021 (decision # 144250). On March 9, 2022, claimant filed a late request for hearing on decision # 92517 and a timely request for hearing on decision # 144250. On March 15, 2022, decision # 153428 became final without claimant having filed a request for hearing. On March 23, 2022, claimant filed a late request for hearing on decision # 153428.

On July 13, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 2, 2023, at 9:30 a.m. in regard to decision # 92517, and notice of a combined hearing scheduled for August 2, 2023, at 10:45 a.m. in regard to decisions # 153428 and 144250. On August 2, 2023, claimant failed to appear at both hearings. On August 3, 2023, ALJ Lucas issued Orders No. 23-UI-232356, 23-UI-232357, and 23-UI-232355, dismissing claimant's requests for hearing on decisions #

¹ As explained below, while decision # 92517 indicated only that claimant had been overpaid PEUC and FPUC benefits, the record shows that claimant was actually assessed an overpayment of regular unemployment insurance (regular UI), PEUC, and FPUC benefits.

92517, 153428, and 144250, respectively, due to claimant's failure to appear at the hearings. On August 22, 2023, claimant filed timely requests to reopen the hearings on all three administrative decisions.

On September 18, 2023, and continued on September 21, 2023, ALJ Nyberg conducted a combined hearing on decisions # 153428 and 144250. Also on September 21, 2023, ALJ Nyberg conducted a separate hearing on decision # 92517. All hearings were interpreted in Arabic. On October 4, 2023, ALJ Nyberg issued Order No. 23-UI-237689, allowing claimant's request to reopen the hearing as to decision # 92517, cancelling Order No. 23-UI-232356, allowing claimant's late request for hearing on that decision, and modifying that decision on the merits by concluding that claimant had been overpaid \$942 in regular UI benefits, and \$4,085 in combined FPUC and PEUC benefits, that claimant was required to repay to the Department. On October 6, 2023, ALJ Nyberg issued Order No. 23-UI-237997, allowing claimant's request to reopen the hearing as to decision # 153428, cancelling Order No. 23-UI-232357, allowing claimant's late request for hearing on that decision, and affirming that decision on the merits. Also on October 6, 2023, ALJ Nyberg issued Order No. 23-UI-237984, allowing claimant's request to reopen the hearing as to decision # 144250, cancelling Order No. 23-UI-232355, and affirming decision # 144250 on the merits. On October 9, 2023, claimant filed applications for review of Orders No. 23-UI-237689, 23-UI-237997, and 23-UI-237984 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-237689, 23-UI-237997, and 23-UI-237984. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-1112, 2023-EAB-1113, and 2023-EAB-1114).

Based on a *de novo* review of the entire consolidated record in these cases, and pursuant to ORS 657.275(2), Order No. 23-UI-232356 is **adopted** in all parts except as to the amounts of the overpayments assessed in that order. Order No. 23-UI-232356 is modified to reflect overpayments of \$1,099 in regular UI benefits, \$835 in PEUC benefits, and \$3,600 in FPUC benefits, totaling \$5,534. Additionally, the portions of Orders No. 23-UI-237997 and 23-UI-237984 which allowed claimant's requests to reopen the hearing and late request for hearing on decision # 153428 are **adopted**. The remainder of this decision addresses the merits of Orders No. 23-UI-237997 and 23-UI-237984, regarding whether claimant's overpayments should be waived.

FINDINGS OF FACT: (1) On November 24, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$157. Claimant subsequently claimed benefits for the weeks including February 21, 2021, through March 20, 2021 (weeks 08-21 through 11-21) and March 28, 2021, through May 29, 2021 (weeks 13-21 through 21-21). These are the weeks at issue.

(2) Claimant primarily speaks Arabic and has limited proficiency in English, particularly when reading written English.

(3) When claimant filed her initial claim, the Department's claims system instructed her how to report any wages she earned during weeks in which she claimed benefits. During each of the weeks at issue, claimant performed work for her employer Mt. Hood Community College, and earned \$14 per hour for that work. Due to her limited English proficiency, however, claimant misunderstood the Department's instructions on how to report her earnings. As a result, claimant reported her hourly rate of \$14 as her earnings for each of the weeks at issue, rather than her total gross wages for each of those weeks.

(4) For all of the weeks at issue, the Department paid claimant \$300 in FPUC benefits, totaling \$3,900. For each of weeks 16-21 through 21-21 (April 18, 2021, through May 29, 2021), the Department paid claimant \$157 in PEUC benefits, totaling \$942.²

(5) On June 23, 2021, claimant contacted the Department, and, having learned of her error in reporting her wages, corrected her wages for each of the weeks at issue. Based on this information, the Department determined that claimant was not eligible for benefits for any of the weeks at issue other than week 21-21 (May 23, 2021, through May 29, 2021). For week 21-21, the Department determined that claimant was eligible for a reduced payment of \$107 in PEUC benefits and the full \$300 in FPUC benefits. Thus, the Department determined that claimant had been overpaid a total of \$835 in PEUC benefits and \$3,600 in FPUC benefits for the weeks at issue.

(6) At the time that claimant submitted her waiver requests, she listed monthly expenses totaling \$1,726 and monthly income of \$1,193.

CONCLUSIONS AND REASONS: Claimant is entitled to a waiver of her overpayment of PEUC and FPUC benefits.

Waivers of PEUC overpayments are governed by 15 U.S.C. § 9025(e) which requires, for waiver to be granted, that the overpayment of PEUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. Similarly, waivers of FPUC overpayments are governed by 15 U.S.C. § 9023(f), which requires, for waiver to be granted, that the overpayment of FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. With regard to overpayments of federal pandemic-related benefits, including PEUC and FPUC benefits, federal guidance provides that, in general, “an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility.” Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022). However, “a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state . . . or other similar difficulties (e.g., education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]” UIP 20-21 Change 1, at 10.

With respect to the “contrary to equity and good conscience” element, federal guidance provides that states may defer to state law in defining what it means for repayment to be contrary to equity and good conscience, or may use the federal standard. UIP 20-21 Change 1, at 10. The federal standard provides that recovery is “contrary to equity and good conscience” when one of at least three circumstances are present. Those circumstances are: (1) recovery would cause financial hardship to the person from whom it is sought; (2) the recipient of the overpayment can show (regardless of their financial situation) that due to the notice that such payment would be made or because of the incorrect payment, either they have relinquished a valuable right or changed positions for the worse; or (3) recovery would be

² The Department also paid claimant \$157 in regular UI benefits for each of weeks 08-21 through 11-21 and 13-21 through 15-21. However, only claimant’s federal benefits paid through the FPUC and PEUC programs are at issue in the two overpayment waiver cases discussed here, and claimant’s overpayment of regular UI benefits are therefore not addressed further.

unconscionable under the circumstances. UIPL 20-21 Change 1, at 10-13. The guidance elaborates that recovery would cause financial hardship where “review of the individual’s income to debts (including copies of pay records and bills) reflects the hardship caused by having to repay an overpayment because the individual needs much of their current income and liquid assets (including the CARES Act benefits received) to meet ordinary and necessary living expenses and liabilities.” UIPL 20-21 Change 1, at 11.

Orders No. 23-UI-237997 and 23-UI-237984 each concluded that claimant was not entitled to waiver of her PEUC and FPUC overpayments because the overpayments were claimant’s fault, resulting from her accidental misreporting of her earnings for the weeks at issue. Order No. 23-UI-237997 at 9–10; Order No. 23-UI-237984 at 9. The record does not support this conclusion.

Claimant is entitled to waiver of her PEUC and FPUC overpayments because the record shows that the overpayment of these benefits was without fault on the part of the claimant, and that repayment would be contrary to equity and good conscience. Under UIPL 20-21 Change 1, PEUC and FPUC overpayments may be without fault on the part of an individual if the individual gave incorrect information because of confusing instructions or similar difficulties, such as language barriers. That is what occurred here. Arabic was claimant’s primary language, and the record does not show that instructions on how to report weekly earnings were available in that language. Because of claimant’s limited English proficiency, claimant misunderstood the Department’s requirements and reported inaccurate earnings information on her weekly claims for the weeks at issue, which resulted in the PEUC and FPUC overpayments. Because claimant’s submission of incorrect information was due in substantial part to a language barrier, the record evidence is sufficient to meet the “without fault” element of the federal overpayment waiver standard.

The record likewise shows that repayment of the PEUC and FPUC overpayments would be contrary to equity and good conscience. Although, under UIPL 20-21 Change 1, the Department had the option to use either the state standard or the federal standard in defining what it means for repayment to be contrary to equity and good conscience, the record is silent as to which approach the Department selected. In the absence of evidence to the contrary, it is reasonable to conclude that the Department opted to apply the federal standard, given that the PEUC and FPUC programs are federal benefits programs. Applying the federal approach, the record shows that repayment would be contrary to equity and good conscience because recovery would cause financial hardship to claimant. Claimant earned only \$1,193 per month, but had monthly debts (i.e., expenses) totaling about \$1,726 per month. In light of claimant’s income-to-debt ratio, which shows that her debts exceeded her income, requiring her to repay the PEUC and FPUC overpayments would cause her a financial hardship.

For these reasons, Orders No. 23-UI-237997 and 23-UI-237984 are modified. The portions of these orders concluding that claimant was not entitled to waivers of her PEUC and FPUC overpayments are reversed, and the Department is required to waive those overpayments.

DECISION: Orders No. 23-UI-237689, 23-UI-237997, and 23-UI-237984 are modified as clarified herein.

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

DATE of Service: November 17, 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. 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 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
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