

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1295

Modified
Overpayment Assessed, No Penalties

PROCEDURAL HISTORY: On April 15, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation to obtain benefits, and assessing an overpayment of \$6,200 in regular unemployment insurance (regular UI) benefits, \$5,364 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, \$12,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$1,200 in Lost Wages Assistance (LWA) benefits, a \$7,249.20 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On October 30, 2023, ALJ Frank conducted a hearing at which the employer failed to appear, and on November 7, 2023, issued Order No. 23-UI-240643, affirming the April 15, 2022, administrative decision. On November 27, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Prior to April 25, 2020, claimant held two jobs. One of claimant's jobs was as a full-time caregiver for a family member. Claimant's other job was a part-time job working for SAS Retail Merchandising, LLC. On April 25, 2020, claimant's caregiver job was eliminated due to the COVID-19 pandemic.

(2) On May 7, 2020, claimant filed an initial claim for regular UI benefits. The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of \$248. At or around the time the Department processed claimant's initial claim, a Department representative called claimant to discuss claimant's eligibility for benefits. Based on this conversation, claimant formed the belief that when making weekly claims for benefits, she was "putting it for [her] primary lost job" as a caregiver and that she was not supposed to report hours and earnings from SAS Retail Merchandising, LLC "because [she] wasn't filing unemployment against SAS." Transcript at 20-21.

(3) Claimant filed a weekly claim for benefits for the week of April 26, 2020, through May 2, 2020 (week 18-20). On claimant's weekly claim form for week 18-20, claimant answered "yes" to the question, "Did you work last week or receive any vacation or holiday pay?". Claimant also reported working 25 hours and receiving \$325 in earnings for week 18-20, figures that corresponded to

claimant's part-time job with SAS Retail Merchandising, LLC. The Department did not pay claimant for week 18-20 because the earnings claimant reported for that week exceeded her weekly benefit amount.

(4) Shortly thereafter, the Department sent claimant a letter requesting additional information about claimant's claim for week 18-20. On May 30, 2022, claimant returned the Department's letter with information responding to the inquiries about week 18-20. For the question, "Did you work during the week?" claimant left the answer blank. Exhibit 1 at 8. For the questions, "If you worked, how many hours did you work?" and "What were your gross earnings for the week?" claimant initially wrote something, then marked out what she wrote. Exhibit 1 at 8. At the bottom of the letter claimant wrote the following message:

My primary job was "Lisa Doyle" Senior Services & disability[.] My annual income was \$ 32,000 annually. This job stop 4/25/2020.

S.A.S. Retail Services is my second part time job. I am still currently working 20 a week at \$13.00 an hour.

I have lost most of my income with the loss of my job through senior services division.

Exhibit 1 at 8.

(5) Claimant claimed benefits for the weeks including May 3, 2020, through August 1, 2020 (weeks 19-20 through 31-20), August 16, 2020, through November 7, 2020 (weeks 34-20 through 45-20), January 3, 2021 through March 27, 2021 (01-21 through 12-21), and April 11, 2021 through July 31, 2021 (15-21 through 30-21). These are the weeks at issue.

(6) For each of the weeks at issue, claimant received earnings from SAS Retail Merchandising, LLC that exceeded her weekly benefit amount. However, for each week claimant answered "no" to the question, "Did you work last week or receive any vacation or holiday pay?" and did not list her hours and earnings from SAS Retail Merchandising, LLC. Claimant did not do so because she thought the weekly claim form questions pertained only to her job working as a caregiver that she had lost.

(7) Claimant received \$248 in regular UI benefits for each of weeks 19-20 through 31-20 and weeks 34-20 through 45-20, for a total of \$6,200 in regular UI benefits. Thereafter, claimant's regular UI claim expired, and claimant's claim was extended via a PEUC claim. Claimant received \$248 in PEUC benefits for each of weeks 01-21 through 12-21 and 15-21 through 30-21, for a total of \$6,944 in PEUC benefits.

(8) For each of weeks 19-20 through 30-20, claimant received \$600 in FPUC benefits. For each of weeks 01-21 through 12-21 and 15-21 through 30-21, claimant received \$300 in FPUC benefits. All told, claimant received a total of \$15,600 in FPUC benefits. For each of weeks 31-20 and 34-20 through 36-20, claimant received \$300 in LWA benefits, for a total of \$1,200 in LWA benefits.

(9) Each of the payments the Department made to claimant for weeks 19-20 through 31-20, weeks 34-20 through 45-20, and weeks 01-21 through 12-21 were made on or before March 29, 2021. The Department paid claimant for weeks 15-21 through 30-21 on or after April 19, 2021.

(10) Had claimant accurately reported her hours and earnings for SAS Retail Merchandising, LLC for each of the weeks at issue, the Department would not have paid claimant the \$6,200 in regular UI benefits and would not have paid claimant \$5,364 of the \$6,944 in PEUC benefits claimant received. Because of special weekly benefit amount reduction rules governing weeks 21-21 through 30-21, the Department would have paid claimant PEUC benefits in the amount of \$203 for week 21-21, \$203 for week 22-21, \$144 for week 23-21, \$144 for week 24-21, \$129 for week 25-21, \$129 for week 26-21, \$225 for week 27-21, \$225 for week 28-21, \$89 for week 29-21, and \$89 for week 30-21, for a combined total of \$1,580 in PEUC benefits that the Department would have paid claimant for those weeks.

(11) Had claimant accurately reported her hours and earnings for SAS Retail Merchandising, LLC for each of the weeks at issue, the Department would not have paid \$12,600 of the \$15,600 in FPUC benefits claimant received. Because of special weekly benefit amount reduction rules governing weeks 21-21 through 30-21 that made claimant eligible to receive PEUC benefits for those weeks, the Department would have still paid claimant \$300 in FPUC benefits for each of weeks 21-21 through 30-21, for a combined total \$3,000 in FPUC benefits for those weeks. Had claimant accurately reported her hours and earnings for weeks 31-20 and 34-20 through 36-20, the Department would not have paid claimant the \$1,200 in LWA benefits she received for those weeks.

(12) In February or March 2022, the Department began investigating whether claimant had failed to report earnings from SAS Retail Merchandising, LLC received during the weeks at issue.

(13) On April 15, 2022, the Department issued the April 15, 2022, administrative decision, concluding that claimant had willfully made misrepresentations to obtain the benefits she received for the weeks at issue and assessing overpayments for those benefits that claimant was liable to repay, as well as a monetary penalty, and a 52-week penalty disqualification from future benefits.

CONCLUSIONS AND REASONS: Order No. 23-UI-240643 is modified. Claimant is not liable for overpayments relating to weeks 19-20 through 31-20, 34-20 through 45-20, or 01-21 through 12-21 because ORS 657.267(4) prohibited the Department from amending its initial decisions to allow payment of benefits for those weeks to decisions for those weeks assessing an overpayment that claimant must repay. For the weeks of 15-21 through 30-21, claimant received \$2,388 in PEUC benefits and \$1,800 in FPUC benefits to which she was not entitled. Claimant is liable for an overpayment of \$2,388 in PEUC benefits and \$1,800 in FPUC benefits to be recovered in accordance with the same procedures as apply to recovery of regular UI overpayments. Claimant is not liable for a monetary penalty or penalty weeks.

Remuneration. An individual is only eligible to receive unemployment insurance benefits if they are “unemployed” within the meaning of ORS Chapter 657. ORS 657.155(1) (“An unemployed individual shall be eligible to receive benefits with respect to any week . . .”). Under 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.”

Here, claimant's weekly earnings from SAS Retail Merchandising, LLC exceeded her weekly benefit amount each week for weeks 19-20 through 31-20, weeks 34-20 through 45-20, and weeks 01-21 through 12-21. Claimant therefore did not constitute an "unemployed individual" per ORS 657.100(1) for any of those weeks and, accordingly, was not eligible to receive benefits for those weeks under ORS 657.155(1).

However, for the reasons detailed below, claimant is not liable to repay the benefits she received for weeks 19-20 through 31-20, weeks 34-20 through 45-20, and weeks 01-21 through 12-21.

Overpayment of Regular UI Benefits. 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.* In addition, an individual who has been overpaid benefits under ORS 657.215 because the individual made a willful misrepresentation to obtain benefits is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2)(a). Moreover, an individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. Where the Department has paid benefits, it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The order under review concluded that claimant was paid benefits to which she was not entitled for the weeks at issue because she failed to correctly report her earnings for each week on her weekly claim forms. Order No. 23-UI-240643 at 6-11. The record supports this conclusion. However, the order under review also concluded that claimant's failure to report her earnings were willful misrepresentations because they were omissions willfully made to obtain benefits. Order No. 23-UI-240643 at 11-13. The record does not support that conclusion. The order under review is modified as outlined below to reflect that claimant did not make willful misrepresentations to obtain benefits and therefore is not liable for a monetary penalty or penalty weeks.

For each of the weeks at issue, claimant answered "No" to the question, "Did you work last week or receive any vacation or holiday pay?" and also failed each week to report her hours and earnings from SAS Retail Merchandising, LLC. Transcript at 20. At hearing, claimant explained that the reason she failed to acknowledge on her weekly claim forms that she worked for and received earnings from SAS Retail Merchandising, LLC, was that she understood the weekly claim questions to relate only to her caregiver job, the "primary job" that claimant lost, not to SAS Retail Merchandising, LLC because claimant "wasn't filing unemployment against SAS" she was "filing . . . for the loss of [her] first job, [her] primary job" as a caregiver. Transcript at 20-21. Claimant further explained that a Department representative called her shortly after she filed her initial claim to discuss claimant's eligibility for benefits, and that based on this conversation, claimant was "under the assumption that [she] was not supposed to claim the SAS hours." Transcript at 18, 26.

The Department asserted at hearing that claimant's failure to report her hours and earnings for SAS Retail Merchandising, LLC was the result of willful misrepresentation. First, the Department's witness

testified that claimant had filed initial claims for benefits on five previous occasions and asserted that that showed claimant had experience with unemployment insurance and must have known her duty to report hours and earnings. Transcript at 9. However, the Department’s witness conceded that claimant’s experience reporting hours and earnings in connection with her past claim or claims was “limited” and did not assert that claimant’s previous claim or claims involved a situation where, as here, claimant claimed benefits after losing one job but while still working for another employer, on a part time basis. Transcript at 9. The evidence of claimant’s prior claim or claims did not prove that claimant’s omissions in this case regarding hours and earnings from SAS Retail Merchandising, LLC were willful misrepresentations.

A second point raised by the Department at hearing was that for the first week claimant claimed benefits, the week of April 26 through May 2, 2020 (week 18-20), claimant reported working 25 hours and earning \$325. Transcript at 10; Exhibit 1 at 53. Claimant apparently meant for this to refer to hours and earnings from SAS Retail Merchandising, LLC, because the record shows that claimant’s last day working as a caregiver was April 25, 2020; and further because the \$325 earned for working 25 hours corresponds to a wage of \$13 per hour, which is consistent with the wage SAS Retail Merchandising, LLC paid claimant. Exhibit 1 at 8. Because the Department recognized that claimant’s week 18-20 earnings exceeded her weekly benefit amount, it did not pay claimant benefits for that week. At hearing, the Department witness asserted that because claimant was not paid benefits due to the excess earnings she reported from SAS Retail Merchandising, LLC for week 18-20, her failure to report earnings from SAS Retail Merchandising, LLC on her claim forms for the weeks that followed—the weeks at issue in this case—must have been willful misrepresentations. Transcript at 8.

However, the letter that claimant returned to the Department in response to its inquiries about week 18-20, which was returned on May 30, 2020, just shortly after week 18-20, contains information suggesting that, from the start, claimant was confused about whether she was obligated to report hours and earnings from SAS Retail Merchandising, LLC. For example, in claimant’s response to the letter, which called for information for week 18-20 about hours and earnings, claimant was asked, “Did you work during the week?”, yet did not circle either “Yes” or “No” but left the answer blank. Exhibit 1 at 8. Claimant was also asked, “If you worked, how many hours did you work?” and “What were your gross earnings for the week?”, and for these questions claimant appeared to write something, and then mark it out. Exhibit 1 at 8. Claimant also included a hand-written message at the bottom of the letter, explaining that she viewed the caregiving job she lost as her “primary job”, that SAS Retail Merchandising was her “second part time job” where she was “still currently working”, and that she lost most of her income with the loss of the caregiving job. Exhibit 1 at 8. This message is roughly consistent with claimant’s explanation at hearing that she understood the weekly claim questions to relate only to her caregiver job, the “primary job” that claimant lost, not to SAS Retail Merchandising, LLC. Transcript at 20-21.

Though the Department’s witness suggested at hearing that claimant’s reference in the hand-written message of “still currently working” for SAS Retail Merchandising, LLC was an indication that claimant knew she was supposed to report earnings from that employer, neither the Department nor the ALJ elicited testimony from claimant at hearing that clarified what claimant understood when she wrote that. Transcript at 8, 11. At hearing, claimant did not recall the letter she returned May 30, 2020, believed the first communication she received from the Department about misreporting earnings was

from February 2022, and ultimately stated that she did not have the May 30, 2020, letter in the packet she received for the hearing.¹ Transcript at 21-22, 26, 27.

On balance, the evidence of claimant's hours and earnings reported for week 18-20 is not sufficient to prove that claimant's omissions in this case were willful misrepresentations. The explanation claimant offered at hearing for failing to report hours and earnings for SAS Retail Merchandising, LLC during the weeks at issue was plausible, given that the question, "Did you work last week or receive any vacation or holiday pay?", did not elaborate on what was meant by "work." Therefore, it is not illogical that an individual in claimant's circumstances would view "work" as confined to work performed for the caregiving job that claimant had lost. Furthermore, claimant's May 30, 2020, letter, in the main, substantiates that claimant was operating under a misunderstanding regarding what she was obligated to report.

In light of the foregoing, the Department did not meet its burden to show that claimant's failure to report her hours and earnings for SAS Retail Merchandising, LLC for each of the weeks at issue was the result of willful misrepresentation. Accordingly, the record shows that claimant made the false statements on her weekly claim forms because of an error, not willfully to obtain benefits, and the overpayment of benefits in this case is therefore governed by ORS 657.310(1). Claimant is not liable for a monetary penalty or penalty weeks under ORS 657.310(2)(a) and ORS 657.215.

Lack Authority to Amend Claims. ORS 657.267 provides as follows:

(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.

¹ The ALJ admitted Exhibit 1 without first describing its contents, such as the May 30, 2020 letter, with particularity and without inquiring whether claimant had been served with Exhibit 1 prior to the hearing. *See* Audio Record at 8:20 to 11:30.

(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 for weeks 19-20 through 31-20, 34-20 through 45-20, and 01-21 through 12-21, claimant was overpaid \$6,200 in regular UI benefits, \$2,976 in PEUC benefits, \$10,800 in FPUC benefits, and \$1,200 in LWA benefits. Order No. 23-UI-240643 at 4-9. However, ORS 657.267(4) prohibits the Department from amending its original decisions to allow payment by assessing overpayments for those weeks.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for weeks 19-20 through 31-20, 34-20 through 45-20, and 01-21 through 12-21 by paying each of the claims on or before March 29, 2021. Exhibit 1 at 46-52. 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 April 15, 2022, administrative decision amended the original decisions to allow payment for weeks 19-20 through 31-20, 34-20 through 45-20, and 01-21 through 12-21 because it concluded that claimant was overpaid benefits for those weeks due to excess earnings. The April 15, 2022, administrative decision was issued more than one year after the last decision allowing payment for week 12-21 on March 29, 2021.

Accordingly, the Department was prohibited from making the amendments for weeks 19-20 through 31-20, 34-20 through 45-20, and 01-21 through 12-21, except in cases of willful misrepresentation or fraud. As discussed above, this case is not a case of willful misrepresentation or fraud because claimant’s failure to report her hours and earnings for SAS Retail Merchandising, LLC was due to a mistake or misunderstanding regarding what she was obligated to report. Thus, the one-year limitation on amending decisions under ORS 657.267(4) applies, and the Department was not permitted to amend the original decisions allowing the payment of benefits for weeks 19-20 through 31-20, 34-20 through 45-20, and 01-21 through 12-21 with decisions assessing an overpayment for those weeks.

Claimant is not liable to repay the \$6,200 regular UI overpayment associated with the Regular UI benefits she received for weeks 19-20 through 31-20 and 34-20 through 45-20. Claimant is not liable to repay the \$2,976 PEUC overpayment associated with the PEUC benefits she received for weeks 01-21 through 12-21. Claimant is not liable to repay the \$10,800 FPUC overpayment associated with the FPUC benefits she received for weeks 19-20 through 30-20 and 01-21 through 12-21. Claimant is also not liable to repay the \$1,200 LWA overpayment associated with the LWA benefits she received for weeks 31-20 and 34-20 through 36-20.

Overpayment of PEUC Benefits Weeks 15-21 through 30-21. Per U.S. Department of Labor guidance, recovery of PEUC overpayments are governed by the same procedures that apply to recovery

of overpayment of regular UI. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 17-20 (April 10, 2020) (UIPL 17-20), at I-11. Under the provisions of the CARES Act, 15 U.S.C. § 9025, and focusing only on the weeks at issue *not* prohibited by the one-year limitation on amending decisions under ORS 657.267(4), claimant received PEUC benefits for each of weeks 15-21 through 30-21 to which she was not entitled because she was not eligible for benefits under state law.

For each of weeks 15-21 through 20-21, claimant had earnings from SAS Retail Merchandising, LLC that exceeded her weekly benefit amount. This means that for each of those weeks, claimant was not an “unemployed individual” per ORS 657.100(1) and, accordingly, was not eligible to receive benefits for those weeks under ORS 657.155(1). Therefore, claimant received \$248 in PEUC benefits to which she was not entitled for each of weeks 15-21 through 20-21, totaling \$1,488.

However, for each of weeks 21-21 through 30-21, claimant was entitled to receive PEUC benefits, but in an amount less than her weekly benefit amount, because for those weeks her benefits were subject to a reduction based on the earnings claimant received during each of weeks 21-21 through 30-21. Specifically, Oregon House Bill 3178, signed into law by the Governor on May 17, 2021, temporarily modified the definition of “unemployed” to remove the portion shown in strikethrough, below.

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.~~

The effect of this temporary amendment, effective for weeks beginning May 23, 2021, through January 1, 2022 (weeks 21-21 through 52-21), is to consider individuals working less than full time to have been “unemployed,” and therefore potentially eligible for benefits. This is the case even if they earned more than their weekly benefit amount during weeks claimed during the period in which the amendment is effective. For this reason, although claimant’s earnings for each of weeks 21-21 through 30-21 were more than her weekly benefit amount of \$248, she remained eligible to receive benefits for those weeks.

Nevertheless, the amount of benefits claimant was entitled to receive for each of weeks 21-21 through 30-21 was subject to an earnings reduction under ORS 657.150(6). On September 1, 2020, the Governor signed Senate Bill 1701, which, in relevant part, temporarily modified ORS 657.150(6) as follows:

An eligible unemployed individual who has employment in any week shall have the individual’s weekly benefit amount reduced, but not below zero, by the amount of earnings paid or payable that exceeds the greater of:

- (a) \$300; or
- (b) One-third of the individual’s weekly benefit amount.

This temporary change in the statute was effective September 6, 2020, through January 1, 2022 (weeks 37-20 through 52-21).

Applying ORS 657.150(6), as modified by Senate Bill 1701, to week 21-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$344.60 earnings for week 21-21 that exceeded \$300 was \$44.60. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 21-21 is therefore reduced dollar-for-dollar by \$44.60, which, when rounded, equals \$203. Thus, claimant's weekly benefit amount for week 21-21 was \$203 and claimant was overpaid \$45 in PEUC benefits for that week.

As to week 22-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$344.60 earnings for week 22-21 that exceeded \$300 was \$44.60. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 22-21 is therefore reduced dollar-for-dollar by \$44.60, which, when rounded, equals \$203. Thus, claimant's weekly benefit amount for week 22-21 was \$203 and claimant was overpaid \$45 in PEUC benefits for that week.

As to week 23-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$403.10 earnings for week 23-21 that exceeded \$300 was \$103.10. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 23-21 is therefore reduced dollar-for-dollar by \$103.10, which, when rounded, equals \$144. Thus, claimant's weekly benefit amount for week 23-21 was \$144 and claimant was overpaid \$104 in PEUC benefits for that week.

As to week 24-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$403.10 earnings for week 24-21 that exceeded \$300 was \$103.10. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 24-21 is therefore reduced dollar-for-dollar by \$103.10, which, when rounded, equals \$144. Thus, claimant's weekly benefit amount for week 24-21 was \$144 and claimant was overpaid \$104 in PEUC benefits for that week.

As to week 25-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$418.10 earnings for week 25-21 that exceeded \$300 was \$118.10. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 25-21 is therefore reduced dollar-for-dollar by \$118.10, which, when rounded, equals \$129. Thus, claimant's weekly benefit amount for week 25-21 was \$129 and claimant was overpaid \$119 in PEUC benefits for that week.

As to week 26-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$418.11 earnings for week 26-21 that exceeded \$300 was \$118.11. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 26-21 is therefore reduced dollar-for-dollar by \$118.11, which, when rounded, equals \$129. Thus, claimant's weekly benefit amount for week 26-21 was \$129 and claimant was overpaid \$119 in PEUC benefits for that week.

As to week 27-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$322.98 earnings for week 27-21 that exceeded \$300 was \$22.98. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 27-21 is therefore reduced dollar-for-dollar by \$22.98, which, when rounded, equals \$23. Thus,

claimant's weekly benefit amount for week 27-21 was \$225 and claimant was overpaid \$23 in PEUC benefits for that week.

As to week 28-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$322.98 earnings for week 28-21 that exceeded \$300 was \$22.98. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 28-21 is therefore reduced dollar-for-dollar by \$22.98, which, when rounded, equals \$23. Thus, claimant's weekly benefit amount for week 28-21 was \$225 and claimant was overpaid \$23 in PEUC benefits for that week.

As to week 29-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$458.71 earnings for week 29-21 that exceeded \$300 was \$158.71. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 29-21 is therefore reduced dollar-for-dollar by \$158.71, which, when rounded, equals \$89. Thus, claimant's weekly benefit amount for week 29-21 was \$89 and claimant was overpaid \$159 in PEUC benefits for that week.

As to week 30-21, claimant's weekly benefit amount was \$248. One-third of \$248 is \$82.67. The greater of \$300 and \$82.67 is \$300. The amount of claimant's \$458.72 earnings for week 30-21 that exceeded \$300 was \$158.72. Exhibit 1 at 33-34; Transcript at 16. Claimant's \$248 weekly benefit amount for week 30-21 is therefore reduced dollar-for-dollar by \$158.72, which, when rounded, equals \$89. Thus, claimant's weekly benefit amount for week 30-21 was \$89 and claimant was overpaid \$159 in PEUC benefits for that week.

All told, claimant was overpaid \$2,388 in PEUC benefits for weeks 15-21 through 30-21 ($\$1,488 + \$45 + \$45 + \$104 + \$104 + \$119 + \$119 + \$23 + \$23 + \$159 + \$159 = \$2,388$).

Under 15 U.S.C. § 9025(e)(3), the Department may recover the PEUC benefits by deduction from any future PEUC payments payable to claimant or from any future unemployment compensation payable to her under any state or federal unemployment compensation law administered by the Department during the three-year period following the date she received the PEUC benefits to which she was not entitled.

U.S. Department of Labor guidance documents elaborate that while a PEUC overpayment may be offset by other State and Federal unemployment benefits payable during this three-year period, State agencies "must recover the amount of PEUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [UI] paid by the State." UIPL 17-20, at I-11. "After three years, a State may continue to recover PEUC overpayments through means other than benefit offsets, according to State law." UIPL 17-20 at I-11; *see also* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 17-20, Change 1 (May 13, 2020) at I-8 ("[15 U.S.C. § 9025(e)(3)] requires benefit offset as one method of recovery, but states can also use other means to recover PEUC overpayments as allowable under state or Federal law[.]"). Accordingly, because the provision of state law governing claimant's regular UI overpayment is ORS 657.310(1), claimant is liable to repay the amount of her PEUC overpayment or have it deducted from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date the April 15, 2022, administrative decision becomes final.

Overpayment of FPUC Benefits Weeks 15-21 through 30-21. Under the provisions of the CARES Act, 15 U.S.C. § 9023, claimant also received \$1,800 in FPUC benefits to which she was not entitled because she was not eligible for PEUC benefits for each of weeks 15-21 through 20-21 as explained above.

FPUC is a federal benefits program that provided eligible individuals with \$300 per week, in addition to their regular UI or PEUC weekly benefit amount, during the period of December 27, 2020, through September 4, 2021. Individuals were eligible to receive the full \$300 FPUC benefit if they were eligible to receive at least one dollar of regular UI or PEUC benefits for the claimed week. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) at I-5. Claimant therefore is liable for an overpayment of \$1,800 in FPUC benefits, which corresponds the \$300 in FPUC benefits claimant received for each of weeks 15-21 through 20-21 when she was not entitled to any PEUC benefits for those weeks. As to weeks 21-21 through 30-21, claimant was not overpaid FPUC benefits for any of those weeks because she was entitled to at least one dollar of PEUC benefits for each of weeks 21-21 through 30-21.

Under 15 U.S.C. § 9023(f)(3)(A), the Department may recover the \$1,800 in FPUC benefits claimant was overpaid by deduction from any future FPUC payments payable to claimant or from any future unemployment compensation payable to claimant under any state or federal unemployment compensation law administered by the Department during the three-year period following the date she received the FPUC benefits to which she was not entitled.

U.S. Department of Labor guidance documents elaborate that while an FPUC overpayment may be offset by other State and Federal unemployment benefits payable during this three-year period, State agencies “must recover the amount of FPUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [UI] paid by the State.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) (UIPL 15-20), at I-7. “After three years, a State may continue to recover FPUC overpayments through means other than benefit offsets, according to State law.” UIPL 15-20 at I-7. Accordingly, because the provision of state law governing claimant’s overpayment is ORS 657.310(1), claimant is liable to repay the amount of her FPUC overpayment or have it deducted from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date the April 15, 2022, administrative decision becomes final.

In summary, the order under review is modified. Claimant is not liable for overpayments relating to weeks 19-20 through 31-20, 34-20 through 45-20, or 01-21 through 12-21 because ORS 657.267(4) prohibited the Department from amending its initial decisions to allow payment of benefits for those weeks. For the weeks of 15-21 through 30-21, claimant received \$2,388 in PEUC benefits and \$1,800 in FPUC benefits to which she was not entitled. Claimant is liable to repay those amounts to be recovered in accordance with the same procedures as apply to recovery of regular UI overpayments, which as applies here, means claimant is liable to repay the amount of her PEUC and FPUC overpayments or have the overpayments deducted from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date the April 15, 2022 administrative decision becomes final. Claimant did not willfully make a misrepresentation to obtain benefits, and therefore is not liable for a monetary penalty or penalty weeks.

DECISION: Order No. 23-UI-240643 is modified, as outlined above.

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

DATE of Service: January 12, 2024

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.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة 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.

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