

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1346

Orders No. 23-UI-241850 and 23-UI-241844 Affirmed ~ Ineligible for PUA Benefits
Order No. 23-UI-241845 Modified ~ No Overpayment or Penalties Assessed

PROCEDURAL HISTORY: On December 1, 2021, the Oregon Employment Department (the Department) served an Amended Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective August 2, 2020, because the Department was missing information needed the process the claim. Claimant filed a timely request for hearing on the December 1, 2021, PUA determination. On October 19, 2022, the Department served an Amended Notice of Determination for PUA, concluding that claimant was not eligible for PUA benefits effective August 2, 2020, because he had been discharged from employment for reasons unrelated to COVID-19. On October 21, 2022, the Department served notice of an administrative decision based in part on the October 19, 2022, PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$7,175 in PUA benefits and \$6,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, and a \$3,952.50 monetary penalty. Claimant filed timely requests for hearing on the October 19, 2022, PUA determination and the October 21, 2022, overpayment decision.

On January 13, 2023, ALJ Ramey conducted a hearing on all three administrative decisions. On January 20, 2023, ALJ Ramey issued Order No. 23-UI-213263 reversing the December 1, 2021 PUA determination by concluding that claimant was eligible for benefits for the weeks from August 2, 2020 through May 15, 2021 (weeks 32-20 through 19-21), Order No. 23-UI-213259 modifying the October 19, 2022 PUA determination by concluding that claimant was eligible for PUA benefits for weeks 32-20 through 19-21 but was not eligible for PUA benefits for the weeks from May 16 through July 31, 2021 (weeks 20-21 through 30-21), and Order No. 23-UI-213261 reversing the October 21, 2022 overpayment decision by concluding that claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and was not liable for an overpayment or a monetary penalty.

On February 6, 2023, the Department filed applications for review of Orders No. 23-UI-213263, 23-UI-213259, and 23-UI-213261 with the Employment Appeals Board (EAB). On March 31, 2023 EAB issued EAB Decisions 2023-EAB-0182, 2023-EAB-0181, and 2023-EAB-0183, reversing Orders No. 23-UI-213263, 23-UI-213259, and 23-UI-213261 and remanding the matters for further development of the record to determine whether claimant was eligible for PUA benefits for the weeks at issue and, if not, whether claimant was liable for an overpayment of benefits.

On November 17, 2023, ALJ Ramey conducted another hearing on all three administrative decisions. On November 22, 2023, ALJ Ramey issued Order No. 23-UI-241850, affirming the December 1, 2021, PUA determination by concluding that claimant was not eligible for PUA benefits for weeks 32-20 through 19-21. Also on November 22, 2023, ALJ Ramey issued Order No. 23-UI-241844, concluding that the ALJ lacked jurisdiction to address claimant's eligibility for PUA benefits for weeks after 19-21 because claimant had not claimed benefits for those weeks, and leaving the October 19, 2022, PUA determination undisturbed. Also on November 22, 2023, ALJ Ramey issued Order No. 23-UI-241845, modifying the October 21, 2022, overpayment decision by concluding that claimant was liable for an overpayment of \$13,175 in combined PUA and FPUC benefits that claimant was required to repay, but that claimant did not make a willful misrepresentation and therefore was not liable for a monetary penalty.

On December 12, 2023, claimant filed applications for review of Orders No. 23-UI-241850, 23-UI-241844, and 23-UI-241845 with EAB. Pursuant to OAR 471-041-0095, EAB consolidated its review of Orders No. 23-UI-241850, 23-UI-241844, and 23-UI-241845. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-1344, 2023-EAB-1346, and 2023-EAB-1345).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

In his written argument, claimant asserted, "By concluding that claimant was ineligible because 'the evidence in the record fails to establish [eligibility]' the ALJ has misplaced the burden of persuasion on the claimant rather than on the Department. If the Department had evidence to show that the Claimant was not eligible for benefits, the Department has had ample opportunity to present that evidence." Claimant's Written Argument at 2. However, simply stating that the evidence in the record fails to establish eligibility does not mean that the burden to prove that eligibility has been shifted to claimant. Rather, the statement is an acknowledgment that the *standard* of proof in this case remains the preponderance of the evidence. As outlined in Order No. 23-UI-241850, affirmed here, the Department met their burden to show by a preponderance of the evidence that claimant was not eligible for PUA benefits for the weeks at issue.

Based on a *de novo* review of the entire record in these cases, and pursuant to ORS 657.275(2), Orders No. 23-UI-241850 and 23-UI-241844 are **adopted**. Additionally, the portion of Order No. 23-UI-241845 concluding that claimant did not make a willful misrepresentation and is not liable for a monetary penalty is also **adopted**. The rest of this decision addresses claimant's liability for the overpayment of benefits for the weeks at issue.

FINDINGS OF FACT: (1) On October 14, 2020, claimant filed an initial claim for PUA benefits. The Department determined that claimant's weekly benefit amount was \$205.

(2) Claimant claimed benefits for the weeks from August 2, 2020, through May 15, 2021 (weeks 32-20 through 19-21). These are the weeks at issue. The Department paid claimant PUA benefits for weeks 32-20, 38-20, and 40-20 through 19-21, and also paid claimant FPUC benefits for most of those weeks. The Department did not pay claimant benefits for weeks 33-20 through 37-20 and 39-20 because he reported earnings in excess of his weekly benefit amount for those weeks.

(3) All of the payments that the Department made to claimant for the weeks at issue occurred between January 4, 2021, and June 21, 2021.¹

(4) On December 1, 2021, the Department issued the December 1, 2021, PUA determination, concluding that claimant was not eligible for PUA benefits effective August 2, 2020, because the Department was missing information needed the process the claim. On October 19, 2022, the Department issued the October 19, 2022, PUA determination, concluding that claimant was not eligible for PUA benefits effective August 2, 2020, because he had been discharged from employment. On October 21, 2022, the Department issued the October 21, 2022, overpayment decision, concluding that claimant had been overpaid PUA and FPUC benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was overpaid benefits for the weeks at issue. However, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue, and claimant therefore is not liable for the overpayment.

ORS 657.267, with emphasis added, 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.

¹ 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.

(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.

Order No. 23-UI-541845 concluded that claimant was overpaid \$13,175 in PUA and FPUC benefits that he was required to repay the Department. Order No. 23-UI-541845 at 9. While the record shows that claimant was overpaid benefits in this amount over the course of the weeks at issue, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue because they were paid more than a year prior to the issuance of the October 21, 2022, overpayment decision.

The Department made its original decisions under ORS 657.267(1) to allow the payment of PUA and FPUC benefits for the weeks at issue by paying each of these claims on or before June 21, 2021. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department has one year to amend the decisions to allow benefits.

On October 21, 2022, the Department issued the October 21, 2022, overpayment decision, concluding that claimant was not entitled to the PUA and FPUC benefits he received for the weeks at issue and assessing an overpayment of those benefits. The October 21, 2022, overpayment decision therefore served to amend the Department's initial decisions allowing payment for the weeks at issue to a decision denying payment for those weeks. In contrast, the December 1, 2021, and October 19, 2022, PUA determinations merely concluded that claimant was ineligible to claim benefits under the PUA program, without deciding claimant's entitlement to PUA or FPUC benefits already paid. The December 1, 2021, and October 19, 2022, PUA determinations therefore did not constitute decisions to amend the initial decisions to pay benefits for the weeks at issue.

As explained in Order No. 23-UI-241850, affirmed here, the record shows that claimant was ineligible for PUA benefits for the weeks at issue. Accordingly, claimant was overpaid PUA and corresponding FPUC benefits for the weeks at issue. Further, Order No. 23-UI-241845, as affirmed here, concluded that claimant did not willfully misrepresent himself or commit fraud in order to obtain benefits. Therefore, claimant's case was not one of willful misrepresentation or fraud, and the Department was subject to the one-year limitation on amending its original decisions to allow payment imposed by ORS 657.267(4).

Federal guidance provides, "The terms and conditions of the state law which apply to claims for regular compensation and extended benefits and the payment thereof shall apply to claims for PUA and the payment thereof except as provided in these operating instructions and any additional guidance issued regarding the PUA program." U.S. Dep't of Labor, Unemployment Program Information Letter ("UIPL") No. 16-20 at I-11 (April 5, 2020). Overpayment of PUA benefits is governed by Section

2102(d)(4) of the CARES Act, Pub. L. 116-136, as amended by Section 201(d) of the Continued Assistance Act (“CAA”), which provides that “[i]n the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the State shall require such individuals to repay the amount of such pandemic unemployment to the State agency,” unless the state agency waives repayment. However, federal guidance further provides that, “the State agency must recover the amount of PUA to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [unemployment insurance] paid by the State.” U.S. Dep’t of Labor, UIPL No. 16-20, Change 4 (January 8, 2021) at I-26.

As federal law and guidance do not provide for differing limitations on the Department’s ability to amend decisions allowing the payment of PUA benefits, ORS 657.267(4), an aspect of the terms and conditions of state law which apply to claims for regular unemployment insurance, applies with equal force to the federal claims at issue in this matter. The Department therefore lacked authority to amend the original decisions allowing the payment of benefits for the weeks at issue and, in turn, to assess an overpayment of benefits for those weeks.

DECISION: Orders No. 23-UI-241850 and 23-UI-241844 are affirmed. Order No. 23-UI-241845 is modified, as outlined above.

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

DATE of Service: January 22, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymoz.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
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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.