

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0046

Modified
Overpayment Reduced

PROCEDURAL HISTORY: On July 1, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was paid \$5,634 in Pandemic Emergency Unemployment Compensation (PEUC) and \$2,700 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which she was not entitled and must repay (decision # 130956). Claimant filed a timely request for hearing. On December 15, 2023, ALJ Fraser conducted a hearing, and on December 27, 2023 issued Order No. 23-UI-244233, affirming decision # 130956. On January 2, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 29, 2020, claimant filed an initial claim for regular unemployment (regular UI) benefits. The Department determined that claimant had a monetarily valid claim for benefits with a weekly benefit amount of \$626.

(2) Thereafter, claimant claimed benefits for each of the weeks from June 20 through August 21, 2021 (weeks 25-21 through 33-21). These are the weeks at issue.

(3) During each of the weeks at issue, claimant was engaged in planning and preparing to start her self-employment wreath business.

(4) On her weekly claim forms for each of the weeks at issue, claimant reported that she was available for work that week. Because she did so, the Department paid claimant benefits for each week. Had claimant reported that she was not available for work, the Department would not have paid her benefits.

(5) The Department paid claimant \$626 in PEUC benefits for each of the weeks at issue, for a total of \$5,634 in PEUC benefits. The Department paid claimant \$300 in FPUC benefits, for each of weeks at issue for a total of \$2,700 in FPUC benefits.

(6) The Department paid claimant benefits for week 25-21 on June 28, 2021. The Department paid claimant benefits for each of weeks 26-21 through 33-21 on or after July 6, 2021.¹

(7) On September 24, 2021, the Department issued decision # 141551, an administrative decision concluding that due to her self-employment activities, claimant was not available for work during each of the weeks at issue, and therefore was ineligible for benefits for those weeks. Claimant requested a hearing on decision # 141551. An administrative law judge held a hearing on the matter, and on November 4, 2021 issued Order No. 21-UI-178976 affirming the administrative decision. Claimant filed an application for review with EAB, and on December 30, 2021 EAB issued EAB Decision 2021-EAB-0981, affirming Order No. 21-UI-178976. On January 31, 2022, EAB Decision 2021-EAB-0981 became final without claimant having filed a petition for judicial review with the Oregon Court of Appeals.²

(8) On July 1, 2022, the Department issued decision # 130956. Decision # 130956 assessed an overpayment of \$5,634 in PEUC and \$2,700 in FPUC benefits that claimant was liable to repay the Department. Decision # 130956 did not assert that claimant received the overpaid benefits due to willful misrepresentation or fraud.

CONCLUSIONS AND REASONS: Order No. 23-UI-244233 is modified. Claimant is not liable for overpayments relating to week 25-21 because ORS 657.267(4) prohibited the Department from amending its initial decision to allow payment of benefits for that week to a decision assessing an overpayment for that week that claimant must repay. For weeks 26-21 through 33-21 claimant received \$5,008 in PEUC benefits and \$2,400 in FPUC benefits to which she was not entitled, and is liable for those overpayments to be recovered in accordance with the same procedures that apply to recovery of regular unemployment insurance overpayments.

Lack of Authority to Amend Allowing Decision as to Week 25-21. 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

¹ EAB has taken notice of the facts contain in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

² EAB has taken notice of the facts contain in this paragraph, 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 fact 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-244233 concluded that for the weeks at issue, claimant was overpaid \$5,634 in PEUC and \$2,700 in FPUC benefits. Order No. 23-UI-244233 at 3. In so doing, the order established that for week 25-21, claimant was overpaid \$626 in PEUC benefits and \$300 in FPUC benefits. While this is correct, ORS 657.267(4) prohibited the Department from amending its original decision to allow payment by assessing an overpayment for week 25-21.

The Department made its original decision under ORS 657.267(1) to allow payment of benefits for week 25-21 by paying the claim on June 28, 2021. Because the decision to allow payment did not require notice under ORS 657.267, the Department could only amend the decision to allow payment within one year of the decision, absent “alleged willful misrepresentation or fraud.” ORS 657.267(4).

On July 1, 2022, the Department issued decision # 130956, concluding that claimant was not entitled to the PEUC and FPUC benefits she received for the weeks at issue and assessing an overpayment of those benefits. Decision # 130956 therefore served to amend the Department’s initial decision allowing payment for week 25-21 to a decision denying payment for that week. In contrast, decision # 141551 merely concluded that claimant was not available for work during each of the weeks at issue, and therefore was ineligible for benefits for those weeks, without deciding claimant’s entitlement to PEUC or FPUC benefits already paid. Decision # 141551 therefore did not constitute a decision to amend the initial decision to pay benefits for week 25-21.

Decision # 130956 was issued more than one year after the decision allowing payment for week 25-21 on June 28, 2021. This case is not one of willful misrepresentation or fraud given that decision # 130956 did not assert that claimant received the overpaid benefits due to willful misrepresentation or fraud. Thus, the one-year limitation on amending decisions under ORS 657.267(4) applies, and the Department was not permitted to amend the original decision allowing the payment of benefits for week 25-21 with

a decision assessing an overpayment for that week. Claimant therefore is not required to repay the \$626 PEUC overpayment associated with the PEUC benefits she received for week 25-21. Claimant also is not required to repay the \$300 FPUC overpayment associated with the FPUC benefits she received for week 25-21.

PEUC Overpayment Weeks 26-21 through 33-21. Recovery of PEUC overpayments is governed by the same procedures that apply to recovery of overpayment of regular unemployment insurance benefits. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 17-20 (April 10, 2020) (UIPL 17-20), at I-11.

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.* The individual is liable to repay or have such overpayment deducted from future benefits payable for the five-year period following the week in which the decision establishing the erroneous payment became final. ORS 657.310(1)(c).

Here, the procedures that would apply to recovery of a regular UI overpayment, and therefore that govern recovery of claimant’s PEUC overpayment, is ORS 657.310(1). Decision # 141551, which is final and binding as a matter of law, concluded that claimant was not available for work during weeks 26-21 through 33-21. The record shows that on claimant’s weekly claim forms for each of the weeks at issue, claimant inaccurately reported that she was available for work that week. Because she did so, the Department paid claimant benefits for each week. Had claimant accurately reported that she was not available for work, the Department would not have paid her benefits. Thus, claimant received benefits for weeks 26-21 through 33-21 to which she was not entitled by falsely stating that she was available for work those weeks, regardless of whether she knew that she was not, or intended to provide false information at the time she filed her weekly claims.

Under the PEUC statute, 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 relevant provision of state law 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 her under ORS Chapter 657 during the five-year period following the date decision # 130956 becomes final.

Claimant therefore is required to repay the \$5,008 in PEUC benefits paid for weeks 26-21 through 33-21, or have the overpayment deducted from any future benefits otherwise payable to claimant during the five-year period following the date decision # 130956 becomes final.

FPUC Overpayment Weeks 26-21 through 33-21. Under 15 U.S.C. § 9023, claimant also received \$2,400 in FPUC benefits to which she was not entitled because she was not eligible for PEUC benefits for each of weeks 26-21 through 33-21, 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, from 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 \$2,400 in FPUC benefits, which corresponds to the \$300 in FPUC benefits claimant received for each of weeks 26-21 through 33-21 when she was not entitled to any PEUC benefits for those weeks.

Under 15 U.S.C. § 9023(f)(3)(A), the Department may recover the \$2,400 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 required 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 decision # 130956 becomes final.

Claimant therefore is required to repay the \$2,400 overpayment of FPUC benefits associated with weeks 26-21 through 33-21, or have the overpayment deducted from any future benefits otherwise payable to claimant during the five-year period following the date decision # 130956 becomes final.

In summary, the order under review is modified. Claimant is not liable for the overpayments relating to week 25-21 because ORS 657.267(4) prohibited the Department from amending its initial decision to allow payment of benefits for that week. For the weeks of 26-21 through 33-21, claimant received \$5,008 in PEUC and \$2,400 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 here means claimant is required to repay the amount of her PEUC and FPUC overpayments or have the overpayments deducted from any future benefits otherwise payable to her under ORS Chapter 657 during the five-year period following the date decision # 130956 becomes final.

DECISION: Order No. 23-UI-244233 is modified, as outlined above.

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

DATE of Service: February 8, 2024

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.