

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0159**

*Modified*  
*No Overpayment or Penalties Assessed*

**PROCEDURAL HISTORY:** On October 18, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$11,364 in regular unemployment insurance (regular UI) and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, a \$3,409.20 monetary penalty, and a 52-week disqualification from future benefits. Claimant filed a timely request for hearing. On December 14, 2023 and January 9, 2024, ALJ Nyberg conducted a hearing, and on January 23, 2024, issued Order No. 24-UI-246220, modifying the October 18, 2023 administrative decision by concluding that claimant was overpaid \$7,632 in regular UI and \$4,500 in FPUC benefits that he was required to repay, but did not make a willful misrepresentation in order to obtain benefits, and therefore was not liable for a monetary penalty or a disqualification from future benefits. On February 5, 2024, claimant filed an application for review of Order No. 24-UI-246220 with the Employment Appeals Board (EAB). On February 9, 2024, ALJ Nyberg issued Amended Order 24-UI-247784, reducing the assessed overpayment to \$3,816 in regular UI and \$1,800 in FPUC benefits.<sup>1</sup>

<sup>1</sup> Claimant's February 5, 2024, application for review of Order No. 24-UI-246220 is construed as applicable to this amended order, and Amended Order No. 24-UI-247784 is therefore considered the order under review in this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant did not make a willful misrepresentation in order to obtain benefits, and therefore was not liable for a monetary penalty or a disqualification from future benefits, is **adopted**. Additionally, the portion of the order under review concluding that claimant was not overpaid benefits for the weeks of April 25 through June 12, 2021 (weeks 17-21 through 23-21) is **adopted**. The remainder of this decision addresses claimant's liability for overpayment of benefits for the weeks from June 27 through July 31, 2021 (weeks 26-21 through 30-21) and August 15 through September 11, 2021 (weeks 33-21 through 36-21).

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for unemployment insurance benefits on October 22, 2020. The Department determined that claimant's weekly benefit amount for regular UI benefits was \$477.

(2) Claimant claimed benefits for the weeks from June 27 through July 31, 2021 (weeks 26-21 through 30-21) and August 15 through September 11, 2021 (weeks 33-21 through 36-21). These are the weeks at issue. The Department paid claimant his weekly benefit amount of \$477 for each of the weeks at issue, totaling \$4,293. The Department also paid claimant \$300 in FPUC benefits for each of weeks 26-21 through 30-21 and 33-21 through 35-21, totaling \$2,400. The Department made each of these payments between July 6, 2021, and September 13, 2021.

(3) Claimant performed work for employer PRT Construction, LLC during each of the weeks at issue. For each of these weeks, claimant earned wages from the employer in excess of his weekly benefit amount. Claimant failed to report these wages when he filed his weekly claims for benefits for each of these weeks. If claimant had reported these wages, the Department would not have paid claimant benefits for the weeks at issue.

(4) In January 2022, PRT Construction, LLC responded to the Department's request for information on claimant's earnings during the weeks at issue for purposes of a "Benefit Earnings Audit." Exhibit 2 at 31. The employer reported claimant's earnings for the weeks at issue, as above, and the Department subsequently determined that claimant had not been eligible for benefits for those weeks.

(5) On October 18, 2023, the Department issued the October 18, 2023, administrative decision, concluding, in relevant part, that claimant was not entitled to benefits for the weeks at issue and assessing an overpayment amount that included the benefits paid during those weeks.

**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 because they were paid more than a year prior to the issuance of the October 18, 2023, administrative decision, and claimant therefore is not liable to repay the overpaid benefits.

ORS 657.310(1) 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.*

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 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.)

The order under review concluded that claimant was overpaid state and federal benefits for the weeks at issue, which he was required to repay the Department. Amended Order No. 24-UI-247784 at 8. While the record shows that claimant was overpaid benefits for 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 18, 2023, administrative decision.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each of these claims on or before September 13, 2021. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department had one year to amend the decision to allow benefits.

On October 18, 2023, the Department issued the October 18, 2023, administrative decision, concluding that claimant was not entitled to the benefits he received for the weeks at issue. The record suggests that

claimant was at fault for the overpayment because he failed to report his earnings for the weeks at issue. However, the order under review, as affirmed here, concluded that claimant did not *willfully* misrepresent himself or commit fraud in order to obtain benefits. Therefore, claimant's case is 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). Accordingly, the Department lacked authority to amend the original decisions that allowed the payment of benefits and, in turn, to assess an overpayment of benefits for the weeks at issue, as benefits for each of those weeks were paid more than one year prior to the issuance of the October 18, 2023, administrative decision. Claimant therefore is not liable to repay the overpaid regular UI or FPUC benefits for the weeks at issue.

**DECISION:** Amended Order No. 24-UI-247784 is modified, as outlined above.

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

**DATE of Service:** March 11, 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](https://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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