

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0385

Order No. 24-UI-252438 Affirmed
Late Request for Hearing Allowed
Ineligible for PUA Weeks 53-20 through 35-21
Order No. 24-UI-252440 Modified
Overpayment Reduced

PROCEDURAL HISTORY: On November 8, 2021, the Oregon Employment Department (the Department) served a notice of determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective December 27, 2020. On November 29, 2021, the PUA determination became final without claimant having filed a request for hearing. On September 30, 2022, the Department served notice of an administrative decision based in part on the PUA determination, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$7,175 in PUA and \$10,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 141521). On October 4, 2022, claimant filed a timely request for hearing on decision # 141521 and a late request for hearing on the PUA determination.

On April 9, 2024, ALJ Nyberg conducted hearings on both matters, and on April 17, 2024, issued Order No. 24-UI-252438, allowing claimant's late request for hearing on the PUA determination and affirming the determination by concluding that claimant was ineligible for PUA benefits for the weeks from December 27, 2020, through September 4, 2021 (weeks 53-20 through 35-21). Also on April 17, 2024, ALJ Nyberg issued Order No. 24-UI-252440, affirming decision # 141521. On April 22, 2024, claimant filed applications for review of Orders No. 24-UI-252438 and 24-UI-252440 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-252438 and 24-UI-252440. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0385 and 2024-EAB-0386).

EAB considered the entire consolidated hearing record. EAB agrees with Order No. 24-UI-252438's findings of fact, reasoning, and conclusions that that claimant's late request for hearing on the PUA determination was allowed, and that claimant was ineligible for PUA benefits for weeks 53-20 through

35-51. Pursuant to ORS 657.275(2), Order No. 24-UI-252438 is **adopted**. The rest of this decision addresses Order No. 24-UI-252440, regarding the merits of decision # 141521.

FINDINGS OF FACT: (1) On May 25, 2020, claimant filed an initial application for PUA benefits. The Department determined the claim to be monetarily valid with a weekly benefit amount (WBA) of \$205.

(2) Claimant filed claims for PUA benefits for the weeks from December 27, 2020, through February 13, 2021 (weeks 53-20 through 06-21) and February 21 through September 4, 2021 (weeks 08-21 through 35-21). These are the weeks as issue.

(3) For each of the weeks at issue, the Department paid claimant \$205 in PUA benefits and \$300 in FPUC benefits. For weeks 53-20 through 06-21, and 08-21 and 09-21, the payments were made on or before September 29, 2021. For weeks 10-21 through 35-21, the payments were made on September 30, 2021.¹

(4) On November 8, 2021, the Department issued the PUA determination concluding that claimant was ineligible for PUA benefits effective December 27, 2020. Order No. 24-UI-252438 affirmed the PUA determination, concluding that claimant failed to disclose that he had no recent connection to the Oregon labor market and could not provide required documentary proof of such a connection, a condition of PUA eligibility for the weeks at issue. Order No. 24-UI- 252438 at 5. EAB has affirmed Order No. 24-UI-252438 by adopting its findings and conclusions.

(5) On September 30, 2022, the Department issued decision # 141521, denying claimant benefits for the weeks at issue and assessing an overpayment of \$7,175 in PUA benefits and \$10,500 in FPUC benefits for those weeks.

CONCLUSIONS AND REASONS: Claimant was overpaid \$7,175 in PUA benefits and \$10,500 in FPUC benefits for the weeks at issue. However, the Department only had authority to amend the original decisions allowing the payment of benefits for weeks 10-21 through 35-21 to a decision denying benefits, and claimant therefore only must repay the overpayments for those weeks, totaling \$5,370 in PUA benefits and \$7,800 in FPUC benefits.

PUA and FPUC overpayments. Overpayment of PUA benefits is governed by 15 U.S.C. § 9021(d)(4), which provides that, absent a waiver of recovery by the State, States must require individuals to repay PUA benefits to which they are not entitled. Further, per U.S. Dep’t of Labor, Unemployment Program Information Letter (“UIPL”) 16-20 Change 4 at I-26, “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.”

¹ EAB has taken notice of these facts 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 facts will remain in the record.

Regarding the procedures that apply to recovery of overpayments of regular unemployment insurance, ORS 657.310(1)(a) and (c) provide 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 during the five-year period following the date the decision establishing the erroneous payment becomes final. ORS 657.310(1)(a) 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 November 8, 2021, PUA determination, which has not been disturbed on appeal, concluded that claimant was ineligible for PUA benefits effective December 27, 2020 (week 53-20). The basis of that ineligibility was claimant's failure to disclose a material fact—that he could not provide proof of his recent connection to the Oregon labor market because he had no such connection. Therefore, claimant was not entitled to the benefits he received for the weeks at issue. However, for reasons explained in greater detail below, the Department only had the authority to amend decisions allowing the payment of benefits for weeks 10-21 through 35-21 to a decision denying the payment of benefits for those weeks. Claimant therefore must repay or have deducted from future benefits \$5,330 in PUA benefits for those weeks.²

With respect to the overpayment of FPUC benefits for weeks 10-21 through 35-21, under the provisions of the CARES Act, 15 U.S.C. § 9023, claimant also received \$7,800 in FPUC benefits to which he was not entitled. FPUC is a federal benefits program that provided eligible individuals with \$300 per week, in addition to their regular unemployment insurance (regular UI) or PUA weekly benefit amount, during the period of December 27, 2020, through September 4, 2021 (weeks 53-20 through 35-21). *See* UIPL No. 15-20 (April 4, 2020) at 6. Individuals were eligible to receive the full \$300 FPUC benefit if they were eligible to receive at least one dollar of regular UI or PUA benefits for the claimed week. UIPL 15-20 at I-5. Because claimant was not eligible for at least one dollar of PUA benefits for weeks 10-21 through 35-21, he also was ineligible to receive FPUC benefits for those weeks. *See* UIPL No. 15-20 at I-7 (“If an individual is deemed ineligible for regular compensation in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created.”).

Accordingly, claimant was overpaid \$300 in FPUC benefits for weeks 10-21 through 35-21 for a total FPUC overpayment of \$7,800.³ Under 15 U.S.C. § 9023(f)(3)(A), the Department may recover the FPUC benefits 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 he received the FPUC benefits to which he was not entitled.

Additional federal 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.” UIPL 15-20 at I-7.

² \$205 x 26 weeks = \$5,330.

³ \$300 x 26 weeks = \$7,800.

“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. Therefore, because the provision of state law governing claimant’s PUA overpayment is ORS 657.310(1)(a) and (c), claimant is liable to repay the amount of the 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 # 141521 becomes final.

Authority to amend original decisions allowing payment. 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.)

Order No. 24-UI-252440 concluded that claimant was overpaid a total of \$7,175 in PUA benefits and \$10,500 in FPUC benefits that he was required to repay for the weeks at issue. Order No. 24-UI-252440 at 5. As discussed above, the record shows that claimant was overpaid those benefits. However, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue more than a year after the original decisions were issued by paying benefits. Payments of benefits for weeks 53-20 through 06-21 and 08-21 through 09-21, and therefore the decisions allowing

the payment of benefits for those weeks, were each made on or before September 29, 2021. Because decision # 141521 was issued September 30, 2022, more than one year after the original decisions were issued, the Department was without authority to amend them to a decision denying the payment of benefits for those weeks. Claimant therefore is not liable for the overpayments resulting from those benefit weeks.

However, benefit payments for weeks 10-21 through 35-21, and therefore the decisions allowing the payment of benefits for those weeks, were made on September 30, 2021. Because the Department issued decision # 141521 on September 30, 2022, within one year of the original decisions allowing payment, the Department was authorized to amend the original decisions to a decision denying payment for those weeks. Claimant therefore is liable for the resulting overpayments for those weeks, totaling \$5,330 in PUA benefits and \$7,800 in FPUC benefits.

For these reasons, claimant is liable to repay, or have deducted from future benefits as described above, \$5,330 in PUA benefits and \$7,800 in FPUC benefits. Claimant is not liable for the remaining overpayments of benefits.

DECISION: Order No. 24-UI-252438 is affirmed. Order No. 24-UI-252440 is modified, as outlined above.

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

DATE of Service: May 31, 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.surveymzmo.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 الاستئناف 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.