

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0419

*Order No. 24-UI-252363 Affirmed ~
Late Request for Hearing Allowed, Ineligible for Pandemic Unemployment Assistance*
*Order No. 24-UI-252508 Modified ~
Late Request for Hearing Allowed, No Overpayment or Penalties*

PROCEDURAL HISTORY: On March 21, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective March 15, 2020. On March 31, 2022, the Department served notice of an administrative decision based in part on the PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$25,755 in combined PUA, Federal Pandemic Unemployment Compensation (FPUC), and Lost Wages Assistance (LWA) benefits that claimant was required to repay, plus a \$3,593.25 monetary penalty.¹ On April 11, 2022, the PUA determination became final without claimant having filed a request for hearing. On April 20, 2022, the overpayment decision became final without claimant having filed a request for hearing.

On July 5, 2022, claimant filed late requests for hearing on the PUA determination and the overpayment decision. ALJ Kangas considered claimant's requests, and on November 10, 2022, issued Orders No. 22-UI-207126 and 22-UI-207123, dismissing claimant's requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 24, 2022. Claimant filed a timely response to the appellant questionnaire. On March 19, 2024, OAH served notice of hearings on whether to allow claimant's late requests for hearing on the PUA determination and the overpayment decision and, if so, the merits of those decisions.

On April 8, 2024, ALJ Nyberg conducted separate hearings regarding the PUA determination and the overpayment decision. On April 16, 2024, ALJ Nyberg issued Order No. 24-UI-252363, allowing claimant's late request for hearing on the PUA determination and affirming that decision by concluding that claimant was not eligible for PUA benefits for the weeks from March 15, 2020, through May 13,

¹ The March 31, 2022, overpayment decision concluded that claimant was overpaid PUA, FPUC, and Pandemic Emergency Unemployment Compensation (PEUC) benefits. Order No. 24-UI-252508, Exhibit 1 at 2. However, as the record shows that claimant's benefit payments consisted of PUA, FPUC, and LWA benefits, this conclusion is presumed to be scrivener's error.

2021 (weeks 12-20 through 10-21). On April 18, 2024, ALJ Nyberg issued Order No. 24-UI-252508, allowing claimant's late request for hearing on the overpayment decision and modifying that decision by concluding that claimant was overpaid \$25,755 in combined PUA, FPUC, and LWA benefits that he was required to repay, but that claimant did not make a willful misrepresentation and therefore was not liable for a monetary penalty.

On May 2, 2024, claimant filed applications for review of Orders No. 24-UI-252363 and 24-UI-252508 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-252363 and 24-UI-252508. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0419 and 2024-EAB-0420).

EAB considered the entire consolidated hearing record. EAB agrees with Order No. 24-UI-252363's findings of fact, reasoning, and conclusions that claimant's late request for hearing on the PUA determination should be allowed, and that claimant was not eligible for PUA benefits. Pursuant to ORS 657.275(2), Order No. 24-UI-252363 is **adopted**.

Additionally, EAB agrees with the portions of Order No. 24-UI-252508 concluding that claimant's late request for hearing on the overpayment decision should be allowed, and that claimant did not make a willful misrepresentation in order to obtain benefits, and therefore was not liable for a monetary penalty. Pursuant to ORS 657.275(2), those portions of Order No. 24-UI-252508 are **adopted**. The remainder of this decision addresses claimant's liability for the assessed overpayment.

FINDINGS OF FACT: (1) On or around June 26, 2020, claimant filed an initial claim for PUA benefits. The Department determined that claimant's weekly benefit amount was \$205. Claimant claimed benefits for the weeks from March 15, 2020, through March 13, 2021 (weeks 12-20 through 10-21). These are the weeks at issue. The Department paid claimant a total of \$10,455 in PUA, \$13,500 in FPUC, and \$1,800 in LWA benefits for all of the weeks at issue. The Department made all of these payments between July 21, 2020, and March 17, 2021.²

(2) Claimant reported on his initial claim that he had been self-employed with a recreation vehicle service company, and the Department initially determined that claimant was eligible for PUA benefits on this basis.

(3) On March 21, 2022, the Department issued the PUA determination concluding that claimant was not eligible for PUA benefits effective March 15, 2020, because they were unable to substantiate the existence of the business that claimant reported on his initial claim.

(4) On March 31, 2022, the Department issued the overpayment decision concluding that claimant was not entitled to benefits for the weeks at issue because he was not eligible for PUA benefits and by extension, FPUC or LWA benefits, during those weeks, and assessing an overpayment amount that included the state and federal benefits paid during those weeks.

² 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 fact will remain in the record.

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 overpayment decision, and claimant therefore does not have 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.)

Order No. 24-UI-252508 concluded that claimant was overpaid state and federal benefits for the weeks at issue that he must repay. Order No. 24-UI-252508 at 9. However, 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 those weeks because they were paid more than a year prior to the issuance of the March 31, 2022, overpayment 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 March 17, 2021. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department had one year to amend the decisions to allow payment.

On March 31, 2022, the Department issued the overpayment decision concluding that claimant was not entitled to the benefits he received for the weeks at issue. The Department asserted in this decision that there was no record of the business with which claimant had reported being self-employed, and that this constituted a willful misrepresentation. However, Order No. 24-UI-252508, as affirmed here, concluded that claimant did not make a willful misrepresentation in order to obtain benefits. Order No. 24-UI-252508 at 5. 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 overpayment decision. Claimant therefore is not liable to repay the overpaid PUA, FPUC, or LWA benefits for the weeks at issue.

DECISION: Order No. 24-UI-252363 is affirmed. Order No. 24-UI-252508 is modified, as outlined above.

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

DATE of Service: June 14, 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.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 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.

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