

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0424**

*Application for Review Dismissed*  
*No Justiciable Controversy*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On November 29, 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 regular unemployment insurance (regular UI) benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Pandemic Emergency Unemployment Compensation (PEUC) benefits totaling \$43,016 that claimant was required to repay to the Department, a \$2,904.80 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 193635). Claimant filed a timely request for hearing. On January 5, 2024, ALJ Chiller conducted a hearing at which the employer failed to appear, and on February 7, 2024 issued Order No. 24-UI-247555, modifying decision # 193635 by concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and was liable for an overpayment of \$26,014 of regular UI benefits and \$24,320 of FPUC and PEUC benefits, a \$15,100.20 monetary penalty, and a 52-week disqualification from future benefits.<sup>1</sup>

On February 25, 2024, and February 26, 2024, the employer filed a timely request to reopen the January 5, 2024, hearing. On April 8, 2024, ALJ Chiller conducted a hearing at which claimant, still employed at that time by the employer, appeared as the employer's representative. On April 10, 2024, ALJ Chiller issued Order No. 24-UI-251962, denying the employer's request to reopen and leaving Order No. 24-UI-247555 undisturbed.<sup>2</sup> Per OAR 471.040.0040(6) (February 10, 2012), the employer's request to reopen, after having been denied by the Office of Administrative Hearings (OAH), is also considered by the Employment Appeals Board (EAB) as an application for review of Order No. 24-UI-247555.<sup>3</sup> This

<sup>1</sup> Although Order No. 24-UI-247555 stated that it affirmed decision # 193635, it modified that decision by changing the amount of the overpayment and monetary penalty. Order No. 24-UI-247555 at 17.

<sup>2</sup> Both parties subsequently filed timely applications for review of Order No. 24-UI-251962 with EAB, which are addressed separately in EAB Decision 2024-EAB-0401.

<sup>3</sup> "In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision." OAR 471-040-0040(6).

matter comes before EAB based upon the employer's application for review of Order No. 24-UI-247555.

**CONCLUSIONS AND REASONS:** The employer's application for review of Order No. 24-UI-247555 presents no justiciable controversy and is dismissed.

On February 25, 2024, and February 26, 2024, the employer filed with EAB a request to reopen the January 5, 2024, hearing, which is now before EAB as an application for review of Order No. 24-UI-247555 because the request to reopen was denied. Order No. 24-UI-247555 concluded that claimant was liable to repay an overpayment of benefits and assessed related penalties. The employer did not demonstrate that the order's conclusions were adverse to their interests. The employer asserted in a statement that was part of what is now considered their application for review that the administrative decision under appeal in Order No. 24-UI-247555 "has directly caused both financial harm and emotional distress to our business[.]" Employer's February 26, 2024, Request to Reopen at 1. However, the order under review concluded that claimant was not entitled to benefits previously paid on her claim, and therefore the employer's financial interests regarding unemployment insurance contributions were not negatively impacted by the order. To the extent the employer experienced "distress" resulting from the order's impact on claimant, such indirect effects of an order do not give rise to a controversy that can be adjudicated through appellate review of the order. As such, the employer did not assign error to any portion of that order and alleged no facts entitling the employer to further relief in this matter.

As the order under review was adverse to claimant's interests rather than the employer's, an application for review of the order *filed by claimant* would present a justiciable controversy. Claimant has not filed an application for review of Order No. 24-UI-247555.<sup>4</sup> Accordingly, there is currently no justiciable controversy before EAB based upon the employer's application for review. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because this case presents no justiciable controversy, the application for review of Order No. 24-UI-247555 is dismissed and the order remains undisturbed.

**DECISION:** The employer's application for review is dismissed. Order No. 24-UI-247555 remains undisturbed.

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

**DATE of Service:** May 16, 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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<sup>4</sup> As discussed in footnote 2, claimant filed an application for review of Order No. 24-UI-251962, which denied the employer's request to reopen. EAB affirmed that order in EAB Decision 2024-EAB-0401.

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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**

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**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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