

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0786

Affirmed
Overpayment Waiver Denied

PROCEDURAL HISTORY: On June 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for waiver of an overpayment of Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) benefits that the Department had previously assessed (decision # L0004411543). Claimant filed a timely request for hearing. On October 22, 2024, ALJ Monroe conducted a hearing, and on November 4, 2024 issued Order No. 24-UI-271916, affirming decision # L0004411543. On November 7, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), and with the exception of the facts of which EAB has taken judicial notice, below, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On July 4, 2020, claimant filed an initial claim for PUA benefits. The Department determined that claimant's PUA claim was monetarily valid, with an effective date of February 29, 2020 and a weekly benefit amount of \$205. Claimant subsequently claimed benefits for a period of weeks in 2020 and 2021. The Department paid claimant PUA and FPUC benefits for the weeks he claimed.

(2) On November 8, 2021, the Department issued an administrative decision concluding that claimant was not eligible for PUA benefits because he failed to provide documentation to substantiate his eligibility for those benefits. 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 on the PUA determination, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$7,175 in PUA benefits and \$10,500 in 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.

(3) 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 that determination by concluding that claimant was ineligible for PUA benefits for the weeks of 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.

(4) On April 22, 2024, claimant filed applications for review of Orders No. 24-UI-252438 and 24-UI-252440 with EAB. EAB consolidated its review of Orders No. 24-UI-252438 and 24-UI-252440. On May 31, 2024, EAB issued EAB Decisions 2024-EAB-0385 and 2024-EAB-0386, affirming and adopting Order No. 24-UI-252438, and modifying Order No. 24-UI-252440 by reducing the amount of the overpayment that claimant was required to repay to the Department. EAB Decision 2024-EAB-0386 concluded, in relevant part:

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.¹

(4) On June 5, 2024, claimant filed a request for waiver of the balances remaining on the assessed overpayments.

(5) On June 30, 2024, EAB Decisions 2024-EAB-0385 and 2024-EAB-0386 became final without claimant having filed petitions for judicial review with the Oregon Court of Appeals.²

CONCLUSIONS AND REASONS: Claimant is not entitled to a waiver of his overpaid PUA and FPUC benefits.

Waivers of PUA overpayments are governed by 15 U.S.C. § 9021(d)(4), which require, for waiver to be granted that the overpayment of PUA benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. Similarly, waivers of FPUC overpayments are governed by 15 U.S.C. § 9023(f), which requires for waiver to be granted that the overpayment of FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. With regard to overpayments of federal pandemic-related benefits,

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 fact will remain in the record.

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.

including PUA and FPUC benefits, federal guidance provides that, in general, “an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility.” Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022). However, “a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state . . . or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]” UIPL 20-21 Change 1, at 10.

The overpayment of PUA and FPUC benefits resulted from claimant’s failure to provide all information correctly regarding his recent connection to the Oregon labor market. EAB Decision 2024-EAB-0385, which adopted the findings, reasoning, and conclusions of Order No. 24-UI-252438, concluded that claimant was not eligible for the PUA and FPUC benefits that he had been paid because he failed to provide proof to substantiate his PUA claim. EAB Decision 2024-EAB-0386 concluded that the overpayment of benefits was the result of claimant having failed 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. Claimant did not appeal EAB Decisions 2024-EAB-0385 and 2024-EAB-0386, and those decisions are now final. Therefore, their conclusions are binding as a matter of law, and the determination of whether claimant is eligible for waiver of the overpayment rests on those conclusions.

Under UIPL 20-21 Change 1, an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility. Here, claimant did not provide all information correctly that the state requested regarding his connection to the Oregon labor market. The record does not show that claimant’s failure to provide all the information correctly was the result of “conflicting, changing, or confusing information or instructions from the state . . . or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual.” Claimant therefore was at fault for the overpayment.

Because claimant was at fault for the overpayments at issue in this matter, he is not eligible for waiver of the remaining balance of his PUA and FPUC overpayments.³

DECISION: Order No. 24-UI-271916 is affirmed.

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

DATE of Service: December 11, 2024

³ As acknowledged by the order under review, EAB Decision 2024-EAB-0386 reduced claimant’s overpayment liability to \$5,330 in PUA benefits and \$7,800 in FPUC benefits, but it is not clear from the record that the Department has reduced claimant’s outstanding balance accordingly. Order No. 24-UI-271916 at 4 n 3. As such, while claimant is not eligible for waiver of the overpaid PUA and FPUC benefits, he remains liable for repayment only for the amounts specified in EAB Decision 2024-EAB-0386, less any payments he has already made towards those balances.

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 stated above.** See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់យើងទេ បើសិនជាអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ ឬ បើសិនជាអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់យើងទេ បើសិនជាអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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.

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