
EO: Intrastate
BYE: 06-Mar-2021

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2024-EAB-0854</p>
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Modified
Request to Reopen Allowed
Late Request for Hearing Allowed
Overpayment Repayable by Deduction Only

PROCEDURAL HISTORY: On January 12, 2022, 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 \$38,380 in combined Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Lost Wages Assistance (LWA) benefits that claimant was required to repay, plus a \$5,487 monetary penalty. On February 1, 2022, the January 12, 2022 administrative decision became final without claimant having filed a request for hearing.

On March 19, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on May 28, 2024 issued Order No. 24-UI-255143, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 11, 2024. On June 11, 2024, claimant filed a timely response to the appellant questionnaire. On July 1, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-255143 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of the January 12, 2022, administrative decision.

On July 26, 2024, the Office of Administrative Hearings (OAH) served notice that the hearing was scheduled for August 14, 2024. On August 14, 2024, claimant failed to appear at the hearing, and on August 15, 2024, ALJ Janzen issued Order No. 24-UI-262643, dismissing claimant's request for hearing due to his failure to appear. On August 30, 2024, claimant filed a timely request to reopen the hearing. On November 22, 2024, ALJ Janzen conducted a hearing, and on November 26, 2024 issued Order No. 24-UI-274799, allowing claimant's request to reopen the hearing, allowing claimant's late request for hearing on the January 12, 2022 administrative decision, and modifying that decision by concluding that claimant was overpaid benefits but not due to a willful misrepresentation of fact, and was only liable for repayment of \$6,970 in PUA and \$10,200 in FPUC benefits for the weeks of January 10 through

September 4, 2021 (weeks 02-21 through 35-21). On December 16, 2024, claimant filed an application for review of Order No. 24-UI-274799 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the parts of Order No. 24-UI-274799 allowing claimant's request to reopen claimant's late request for hearing, and concluding that claimant was overpaid benefits not as a result of willful misrepresentation and was only liable for repayment of benefits for weeks 02-21 and later. Those parts of Order No. 24-UI-274799 are **adopted**. See ORS 657.275(2). The rest of this decision addresses the manner in which claimant must repay benefits for weeks 02-21 and later.

FINDINGS OF FACT: (1) On November 12, 2020, claimant filed an initial claim for PUA benefits. The Department determined that claimant had a monetarily valid claim, with a weekly benefit amount of \$205.

(2) Claimant claimed benefits for the weeks of January 10 through September 4, 2021 (weeks 02-21 through 35-21). These are the weeks at issue. For each of the weeks at issue, the Department paid claimant his weekly benefit amount of \$205 in PUA benefits, totaling \$6,970. Additionally, for each of the weeks at issue, the Department paid claimant \$300 in FPUC benefits, totaling \$10,200.

(3) Prior to the COVID-19 pandemic, claimant provided services as a handyman, performing general labor of various sorts including landscape maintenance, minor home repair, and automotive work. Claimant did not hold a license with the Oregon Construction Contractor's Board or any other licensing body for these activities, as he did not believe that he needed a license. Claimant also did not register his handyman activities as a business with the Oregon Secretary of State. Claimant had provided the handyman services for several years until the beginning of the pandemic, typically earning between \$12,000 and \$15,000 per year.

(4) Once the pandemic began, claimant was unable to find work, as the individuals for whom he had provided handyman services were wary of having him come to their homes. Additionally, claimant was quarantined for some time around April or May 2020 because he was caring for a household member who had contracted COVID-19, and then claimant himself became sick with COVID-19.

(5) While claiming benefits, claimant regularly spoke to Department representatives to obtain assistance in making sure that he was correctly entering his information on his claim forms and related documentation. Claimant found that the information that the Department conveyed to him regarding PUA eligibility often changed.

(6) In or around April 2021, the Department contacted claimant and instructed him to provide documentation to substantiate the self-employment he had been performing prior to the pandemic. "[W]ithin a couple days of [the Department]" directing him to provide this information, claimant submitted a notarized affidavit from one of the individuals for whom he had provided handyman services. Transcript at 113. The affidavit stated that claimant "had been contracted for multiple small jobs including automotive and minor home repairs... beginning December 2018 until approximately February 2020." Exhibit 3 at 20. Additionally, claimant sent the Department copies of payment records from Venmo and similar digital payment processors, as he was typically paid via such means.

(7) On November 29, 2021, the Department issued an administrative decision concluding that claimant was not eligible for PUA benefits effective December 27, 2020, because he failed to substantiate his self-employment. The November 29, 2021, PUA determination became final without claimant having filed a request for hearing. On March 19, 2024, claimant filed a late request for hearing on the November 29, 2021, PUA determination. Claimant's late request for hearing on the November 29, 2021, PUA determination ultimately was dismissed on July 3, 2024. As of the date of this decision, claimant has not filed an application for review of the order dismissing claimant's late request for hearing on the November 29, 2021, PUA determination.¹

(8) On January 12, 2022, the Department issued the January 12, 2022, administrative decision, concluding that claimant was overpaid benefits for the weeks at issue because he was not eligible for PUA benefits for the reasons outlined in the November 29, 2021, PUA determination.²

CONCLUSIONS AND REASONS: Claimant was overpaid benefits for the weeks at issue, and is liable to repay those benefits via deduction from future benefits.

Overpayment of PUA Benefits. ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

Federal guidance provides, "The terms and conditions of the state law which apply to claims for regular compensation and extended benefits and the payment thereof shall apply to claims for PUA and the payment thereof except as provided in these operating instructions and any additional guidance issued regarding the PUA program." U.S. Dep't of Labor, Unemployment Program Information Letter ("UIPL") No. 16-20 at I-11 (April 5, 2020).

Overpayment of PUA benefits is governed by 15 U.S.C. § 9021(d)(4), which provides that "[i]n the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the State shall require such individuals to repay the amount of such pandemic unemployment assistance to the State agency," unless the state agency waives repayment.³ However, federal guidance further provides that, "the State agency must recover the amount of PUA to which an

¹ EAB has taken notice of this fact, which is 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 The January 12, 2022, administrative decision also determined that claimant was overpaid benefits for the periods of March 8, 2020, through December 12, 2020 and December 27, 2020 through January 9, 2021 (weeks 11-20 through 50-20 and 53-20 through 01-21). As the order under review explained, however, the Department lacked authority under ORS 657.267(4) to assess an overpayment for these weeks. Order No. 24-UI-274799 at 11. As such, these earlier periods of weeks are not further addressed in this decision.

³ The record does not indicate that the Department has waived repayment of any of the overpaid benefits in this matter.

individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular [unemployment insurance] paid by the State.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) (UIPL 16-20, Change 4), at I-26.

The order under review correctly concluded that claimant was overpaid \$6,970 in PUA benefits for the weeks at issue. Order No. 24-UI-274799 at 13. On November 29, 2021, the Department issued an administrative decision concluding that claimant was not eligible for PUA benefits effective December 27, 2020, which included all of the weeks at issue. Claimant filed a late request for hearing on the November 29, 2021 administrative decision, but that request was dismissed, and the order dismissing the request ultimately became final without claimant having filed an application for review. The November 29, 2021 administrative decision’s conclusion that claimant was not eligible for PUA benefits for the weeks at issue is now binding as a matter of law. As such, claimant is liable for repayment of all of the PUA benefits paid to him for the weeks at issue.

However, the order under review erred in determining the method of repayment applicable to this matter. The order under review concluded, “Because claimant made an apparent error in failing to provide proof of his self-employment, claimant caused the overpayment and must repay that amount under ORS 657.310, the CARES Act, the CAA, and other relevant federal and state laws and rules.” Order No. 24-UI-274799 at 13. The record does not support this conclusion. As explained above, the conclusion that claimant was not eligible for PUA benefits for the weeks at issue is binding as a matter of law. Nevertheless, the Department has not met their burden to show that claimant was at fault for the overpayment of benefits.

The record shows that claimant was engaged in remunerative handyman activities in the period immediately prior to the COVID-19 pandemic, that claimant submitted documentation to substantiate this as self-employment, and that claimant stopped performing these activities for one or more reasons that appear to be related to the pandemic. The Department nevertheless determined that claimant did not provide documentation sufficient to prove that he was self-employed, which was ultimately the basis upon which the conclusions in the November 29, 2021 administrative decision rested.

Even if claimant’s provided documentation was not sufficient to satisfy the Department that he was self-employed as claimed, however, the Department has not shown by a preponderance of the evidence that claimant’s claims of self-employment were untruthful, or that he made any other misrepresentations of fact that led to the payment of benefits to which claimant was not entitled. The record therefore shows only that the overpayment of benefits was the result of an initial decision to pay benefits subsequently being reversed by a decision finding claimant was not eligible for the benefits. As such, claimant was not at fault for the overpayment of PUA benefits, and therefore is only liable to have the amount deducted from any future benefits otherwise payable to him under ORS chapter 657 for any week or weeks within five years following the week in which the January 12, 2022, administrative decision became final.

Overpayment of FPUC Benefits. FPUC was a federal benefits program that provided eligible individuals with \$300 per week, in addition to their 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* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) at 6, (UIPL 15-20).

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.

Overpayment of FPUC benefits is governed by 15 U.S.C. § 9023(f)(2), which provides that “[i]n the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation or Mixed Earner Unemployment Compensation to the State agency,” unless the state agency waives repayment.

Because claimant was not eligible for at least one dollar of PUA benefits for any of the weeks at issue, he also was ineligible for FPUC benefits for those weeks. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20 (April 4, 2020) 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.”).

United States Department of Labor 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. “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 657.315, claimant is liable to have the amount deducted from any future benefits otherwise payable to claimant under ORS Chapter 657 during the five-year period following the date the January 12, 2022, administrative decision became final.

For the above reasons, Order No. 24-UI-274799 is modified. Claimant was not eligible for PUA or FPUC benefits for the weeks at issue, and all of the benefits paid to him for those weeks were therefore overpaid. Claimant therefore is liable to repay those benefits only via deduction from any future benefits otherwise payable to claimant under ORS Chapter 657.⁴

DECISION: Order No. 24-UI-274799 is modified, as outlined above.

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

DATE of Service: January 17, 2025

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

⁴ Claimant should also note that, because this decision has determined that he was not at fault for the overpayment of benefits, he may wish to file another request for waiver of the overpaid benefits. Information on how to do so is included at the end of this decision.

Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

NOTE: If paying back your overpayment would be a financial hardship, you may request an overpayment waiver. The Department may completely forgive the debt and stop collection efforts if you meet certain standards. If you apply for a waiver but do not qualify for the waiver, other relief may be available. Other relief may include a temporary pause in collection efforts or a limit on how much your current benefits may be reduced due to the overpayment. It is important to apply for a waiver as soon as possible because waivers are not retroactive. This means that if the Department grants the waiver, you will not receive a refund of payments you have already made on the overpayment.

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf>

For more information on requesting a waiver, call 503-947-1995 or go to <https://unemployment.oregon.gov/overpayments>.

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>. If you are unable to complete the survey online and wish to have 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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 Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.