

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0002**

*Order No. 24-UI-276851 Affirmed ~ Overpayment Waiver Denied*  
*Order No. 24-UI-276863 Modified ~ Overpayment Waiver Granted in Part, Denied in Part*

**PROCEDURAL HISTORY:** On December 6, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's November 9, 2023, request for waiver of an overpayment of state and federal unemployment insurance benefits that the Department had previously assessed (decision # 141629). Claimant filed a timely request for hearing on decision # 141629. On September 16, 2024, the Department issued an administrative decision denying claimant's July 8, 2024, request for a waiver of the same overpaid benefits that were at issue in her previous waiver request (decision # L0006102008).<sup>1</sup> Claimant filed a timely request for hearing on decision # L0006102008.

On December 12, 2024, ALJ Janzen conducted a hearing on both administrative decisions, and on December 16, 2024, issued Orders No. 24-UI-276851 and 24-UI-276863, affirming decisions # 141629 and L0006102008, respectively. On December 30, 2024, claimant filed applications for review of Orders No. 24-UI-276851 and 24-UI-276863 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-276851 and 24-UI-276863. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0001 and 2025-EAB-0002).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

<sup>1</sup> Decision # L0006102008 indicated that the Department received claimant's waiver request on September 13, 2024. However, the record shows that claimant actually submitted that request to the Department on July 8, 2024.

EAB considered the entire consolidated hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with Order No. 24-UI-276851's findings of fact, reasoning, and conclusion that claimant's November 9, 2023, overpayment waiver request should not be granted. Order No. 24-UI-276851 is **adopted**. See ORS 657.275(2). Additionally, EAB agrees with the parts of Order No. 24-UI-276863 concluding that claimant's July 8, 2024, overpayment waiver request should not be granted as to the overpaid regular unemployment insurance (regular UI) benefits,<sup>2</sup> and that claimant was not at fault for the overpayment of Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC) benefits. Those parts of Order No. 24-UI-276863 are **adopted**. The rest of this decision addresses the waiver of PEUC and FPUC benefits based on claimant's July 8, 2024, waiver request.

**FINDINGS OF FACT:** (1) On March 17, 2020, claimant filed an initial claim for regular UI benefits. The Department determined claimant's weekly benefit amount to be \$480.

(2) Claimant claimed benefits for the weeks of May 24, 2020, through July 25, 2020 (weeks 22-20 through 30-20) and September 27, 2020, through September 4, 2021 (weeks 40-20 through 35-21). These are the weeks at issue.<sup>3</sup> For weeks 40-20 through 35-21, the Department paid claimant a total of \$23,520 in PEUC benefits. Additionally, the Department paid claimant \$600 in FPUC benefits for each of weeks 22-20 through 30-20, and \$300 in FPUC benefits for each of the weeks of December 27, 2020, through September 4, 2021 (weeks 53-20 through 35-21), for a total of \$16,200 in FPUC benefits.

(3) Prior to filing her initial claim in March 2020, claimant had been employed at a restaurant. Shortly before she filed her initial claim, the restaurant temporarily closed due to the COVID-19 pandemic, leading claimant to be temporarily laid off. On or around June 1, 2020, the restaurant reopened, and contacted claimant to let her know that she could return to work. However, claimant elected not to return to work at the restaurant.

(4) In or around June 2021, the Department received information from the restaurant indicating that claimant had elected not to return to work after the restaurant reopened in or around June 2020. The Department subsequently issued an administrative decision concluding that claimant had quit work without good cause, disqualifying her from receiving benefits. Based on that administrative decision, on September 16, 2022, the Department issued an administrative decision concluding that claimant was not

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<sup>2</sup> In concluding that claimant was not eligible for waiver of the overpaid regular UI benefits, Order No. 24-UI-276863 erroneously used claimant's self-reported annual salary at the time she filed the July 2024 waiver request as the primary basis for determining that claimant did not meet the "against equity and good conscience" requirement under OAR 471-030-0053(3)(b)(B) (June 23, 2024). Transcript at 43–44; Order No. 24-UI-276863 at 5–6. In fact, that provision of the rule dictates that the income to be considered in that calculus is the "reported wages in the last four quarters [preceding the filing of the waiver request]," and that *that* sum must be less than or equal to 200% of the federal poverty level for a family of four. OAR 471-030-0053(3)(b)(B)(i). Nevertheless, the record does show that claimant's reported wages for the four calendar quarters preceding her July 2024 waiver request exceeded 200% of the FPL for a family of four, and that claimant therefore is not eligible for a waiver of regular UI benefits under that provision of the rule. Transcript at 20. As such, the error in Order No. 24-UI-276863 was not material to the outcome, and further discussion here is unnecessary.

<sup>3</sup> Claimant also claimed and was paid regular UI benefits for a series of weeks from May through September 2020, and all of these benefits were later determined to have been overpaid. However, the orders under review, as adopted here, found that claimant was not eligible for waiver of the overpayment of those benefits. As such, this analysis addresses only claimant's eligibility for waiver of federal (PEUC and FPUC) benefits.

eligible for benefits that she had been paid, including those for the weeks at issue, and assessing an overpayment for those benefits that claimant was required to repay to the Department. The decision also concluded that claimant had made a willful misrepresentation of material fact to obtain those benefits, by way of failing to correctly report her work separation, resulting in the assessment of penalties.

(5) Claimant appealed the September 16, 2022, overpayment decision. On May 24, 2023, after a hearing, Order No. 24-UI-254717 was issued, modifying the September 16, 2022 overpayment decision by affirming the assessed overpayment and requiring repayment under ORS 657.310, as the overpayment had resulted from claimant's failure to correctly report the work separation; but concluding that claimant had not made a willful misrepresentation of material fact, and therefore was not subject to penalties.<sup>4</sup> Order No. 24-UI-254717 has since become final without an application for review having been filed with EAB.<sup>5</sup>

(6) Based on her employer-reported wages for the third quarter of 2023 through the second quarter of 2024 (September 1, 2023, through June 30, 2024), claimant had an average monthly wage of \$5,884 during those four calendar quarters. For 2024, the federal poverty level for a family of four was \$31,200.

(7) On July 8, 2024, claimant filed a request for a waiver of the overpayment of state and federal benefits.

**CONCLUSIONS AND REASONS:** Claimant is entitled to a waiver of her overpaid PEUC and FPUC benefits.

Waivers of PEUC overpayments are governed by 15 U.S.C. § 9025(e) which requires, for waiver to be granted, that the overpayment of PEUC 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, including PEUC 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 if] the individual was unable to reach the state despite their best efforts to inquire or clarify what information the individual needed to provide[.]" UIPL 20-21 Change 1 at 10.

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<sup>4</sup> Order No. 24-UI-254717 did not address the Department's one-year limitation on recovery of non-fraud overpaid benefits under ORS 657.267(4), despite the facts that benefits for most of the weeks at issue were paid more than one year prior to assessment of the overpayment, and that the overpayment was ultimately determined to not be the result of willful misrepresentation.

<sup>5</sup> 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.

With respect to the “contrary to equity and good conscience” element, federal guidance provides that states may defer to state law in defining what it means for repayment to be contrary to equity and good conscience, or may use the federal standard. UIPL 20-21 Change 1, at 10. The federal standard provides that recovery is “contrary to equity and good conscience” when one of at least three circumstances are present. Those circumstances are: (1) recovery would cause financial hardship to the person from whom it is sought; (2) the recipient of the overpayment can show (regardless of their financial situation) that due to the notice that such payment would be made or because of the incorrect payment, either they have relinquished a valuable right or changed positions for the worse; or (3) recovery would be unconscionable under the circumstances. UIPL 20-21 Change 1, at 10-13. The guidance elaborates that recovery would cause financial hardship where “review of the individual’s income to debts (including copies of pay records and bills) reflects the hardship caused by having to repay an overpayment because the individual needs much of their current income and liquid assets (including the CARES Act benefits received) to meet ordinary and necessary living expenses and liabilities.” UIPL 20-21 Change 1, at 11.

ORS 657.317 provides, in relevant part:

\* \* \*

(2)(a) Except as provided in paragraph (b) of this subsection, the director may waive recovery of all or any part of overpaid benefits subject to repayment or deduction under ORS 657.310 (1) or 657.315 (1) if the director finds that recovery of the benefits would be against equity and good conscience.

(b) The director may not waive recovery under this subsection of overpaid benefits that are subject to the penalty imposed under ORS 657.310 (2).

\* \* \*

(4) Any waiver granted under this section extinguishes all liability of the debtor for the waived amounts.

OAR 471-030-0053 (June 23, 2024) provides, in relevant part:

\* \* \*

(3) Overpayments will be waived if recovery of benefits is against equity and good conscience based on the following criteria

(a) Automatic waiver criteria, the individual has claimant non-fault overpayment and

(A) Has reported wages in the last four quarters that are less than or equal to 300% of the federal poverty level for a family of four, OR

(B) Is a recipient of Temporary Assistance for Needy Families (TANF) within the 60 days prior to establishing the overpayment.

(b) If automatic waiver criteria does not apply, claimants may request a waiver which will be allowed if

\* \* \*

(B) The individual has a claimant fault non-fraud overpayment and

(i) Has reported wages in the last four quarters that are less than or equal to 200% of the federal poverty level for a family of four[.]

The record shows that, under the federal guidelines above, claimant was without fault in causing the overpayment. Order No. 24-UI-276863 correctly concluded that the state-law definition of “contrary to equity and good conscience” applies here, as “Oregon has provided a definition for what is contrary to equity and good conscience in OAR 471-030-0053.” Order No. 24-UI-276863 at 8. Nevertheless, the order concluded that claimant did not meet that standard under state law because Order No. 24-UI-254717 had determined that “[c]laimant’s overpayment was a claimant fault, non-fraud overpayment,” and claimant’s reported wages for the relevant time period did not meet the requirements for waiver eligibility based on claimant-fault, non-fraud overpayments. Order No. 24-UI-276863 at 5–6, 8. The record does not support this conclusion.

Because claimant was without fault in causing the overpayment of federal benefits, as Order No. 24-UI-276863 acknowledged, the correct provision of state law to apply to determine whether repayment of the federal benefits would be against equity and good conscience is OAR 471-030-0053(3)(a)(A), for “claimant non-fault overpayment[s].” Under that provision, the waiver request should be granted if the individual’s reported wages for the last four calendar quarters prior to the filing of the July 2024 waiver request (i.e., the third quarter of 2023 through the second quarter of 2024) are less than or equal to 300% of the federal poverty level for a family of four. The record shows that for those four quarters, claimant had reported wages which averaged \$5,884 per month, or a total \$70,608 for the entire four quarters. For 2024, the federal poverty level for a family of four was \$31,200. Three times that amount is \$93,600, which is greater than claimant’s total reported wages for the last four calendar quarters. Therefore, because claimant’s reported wages for the last four calendar quarters was less than or equal to 300% of the federal poverty level, requiring repayment would be against equity and good conscience. Claimant’s July 8, 2024, request for waiver of the overpaid PEUC and FPUC benefits is therefore granted.

**DECISION:** Order No. 24-UI-276851 is affirmed. Order No. 24-UI-276863 is modified, as outlined above.

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

**DATE of Service:** February 4, 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

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

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 باتباع 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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