

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0051**

*Modified*  
*Requests to Reopen Allowed*  
*Late Request for Hearing Allowed*  
*No Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On June 13, 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 a \$13,017 overpayment in Regular Unemployment Insurance (regular UI), \$6,600 in Federal Pandemic Unemployment Compensation (FPUC), and \$900 in Lost Wages Assistance (LWA) benefits that claimant was required to repay, a \$5,885 monetary penalty, and a 52-week penalty disqualification from future benefits. On July 5, 2022, the June 13, 2022 administrative decision became final with claimant having filed a request for hearing. On July 14, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 11, 2022 issued Order No. 22-UI-204839, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 25, 2022. On October 25, 2022, claimant filed a timely response to the appellant questionnaire.

On January 6, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 19, 2023 on claimant's late request for hearing on the June 13, 2022 administrative decision and, if allowed, the merits of the decision. On January 19, 2023, claimant failed to appear for the hearing, and on January 20, 2023 ALJ Mott issued Order No. 23-UI-213173, dismissing the hearing request on the June 13, 2022 administrative decision due to claimant's failure to appear. On February 9, 2023, Order No. 23-UI-213173 became final without claimant having filed a request to reopen the hearing. On May 30, 2023, claimant filed a late request to reopen the January 19, 2023 hearing.

On August 5, 2024, OAH served notice of a hearing scheduled for August 20, 2024 on claimant's late request to reopen the January 19, 2023 hearing. On August 20, 2024, claimant failed to appear for the hearing, and ALJ Chiller issued Order No. 24-UI-263170, dismissing the request to reopen based on claimant's failure to appear and leaving Order No. 23-UI-213173 undisturbed. On September 8, 2024, claimant filed a timely request to reopen the August 20, 2024 hearing.

On November 8, 2024, November 26, 2024, December 16, 2024, and January 2, 2025, ALJ Chiller conducted a hearing interpreted in Amharic. The Department appeared at the November 8, 2024 and November 26, 2024 hearing sessions. At the December 16, 2024 hearing session, after the hearing began, a Department representative called into the hearing and requested a postponement to enable a Department representative to appear, which the ALJ granted. Despite requesting and obtaining a postponement, the Department did not appear at the January 2, 2025 hearing session. The employer did not appear at any of the hearing sessions.

On January 15, 2025, ALJ Chiller issued Order No. 25-UI-279848, allowing both of claimant's requests to reopen and claimant's late request for hearing on the June 13, 2022 administrative decision, and affirming the administrative decision on the merits. On January 19, 2025, claimant filed an application for review of Order No. 25-UI-279848 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. 25-UI-279848 allowing claimant's requests to reopen and claimant's late request for hearing. Those parts of Order No. 25-UI-2798848 are **adopted**. See ORS 657.275(2).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Claimant's primary language was Amharic. Claimant had limited English proficiency and did not understand written English.

(2) Beginning in approximately 2005, claimant worked for Huntleigh USA Corporation, in a position at the Portland International Airport. On or about March 2017, claimant began working a second job for Home Care Workers as a caregiver for a client.

(3) Following the onset of the COVID-19 pandemic in March 2020, Huntleigh USA Corporation temporarily laid claimant off from her job at the airport. Claimant continued working for Home Care Workers at that time. Claimant's supervisor at Huntleigh USA advised that claimant could claim unemployment insurance benefits during the layoff. In March or April 2020, claimant spoke with a Department representative and was advised that she "qualified for unemployment and . . . [was] free to apply." January 2, 2025 Transcript at 10.

(4) On May 20, 2020, claimant filed an initial claim for benefits. The Department determined that claimant had a valid initial claim for regular UI benefits with a weekly benefit amount of \$603.

(5) Also in May 2020, a Department representative called claimant. Claimant told them that she had two jobs and was still working at one of them, but the Department representative informed claimant she was still qualified to receive benefits. Claimant understood from this call that because of the COVID-19 pandemic, "it was okay to get paid for the . . . unemployment insurance because [her] income [was] reduced[.]" January 2, 2025 Transcript at 21. Claimant knew she was "employed and working" for Home Care Workers but "didn't know that [she] . . . should report the home care income" because,

during the May 2020 call with the Department representative, she “was told [she] qualified for the . . . unemployment insurance.” January 2, 2025 Transcript at 20.

(6) Claimant claimed benefits for the weeks from May 3 through 9, 2020 (week 19-20), May 17 through October 31, 2020 (weeks 21-20 through 44-20), and January 10 through March 20, 2021 (weeks 02-21 through 11-21). These are the weeks at issue.

(7) Claimant received a total of \$15,678 in regular UI benefits, \$9,600 in FPUC benefits, and \$1,800 in LWA benefits for the weeks at issue, as show in the table below.

| <b>Week</b>  | <b>Regular UI Benefits Paid</b> | <b>FPUC Benefits Paid</b> | <b>LWA Benefits Paid</b> |
|--------------|---------------------------------|---------------------------|--------------------------|
| <b>19-20</b> | \$276                           | \$600                     | \$0                      |
| <b>21-20</b> | \$276                           | \$600                     | \$0                      |
| <b>22-20</b> | \$276                           | \$600                     | \$0                      |
| <b>23-20</b> | \$276                           | \$600                     | \$0                      |
| <b>24-20</b> | \$276                           | \$600                     | \$0                      |
| <b>25-20</b> | \$276                           | \$600                     | \$0                      |
| <b>26-20</b> | \$276                           | \$600                     | \$0                      |
| <b>27-20</b> | \$276                           | \$600                     | \$0                      |
| <b>28-20</b> | \$276                           | \$600                     | \$0                      |
| <b>29-20</b> | \$276                           | \$600                     | \$0                      |
| <b>30-20</b> | \$276                           | \$600                     | \$0                      |
| <b>31-20</b> | \$276                           | \$0                       | \$300                    |
| <b>32-20</b> | \$276                           | \$0                       | \$300                    |
| <b>33-20</b> | \$276                           | \$0                       | \$300                    |
| <b>34-20</b> | \$276                           | \$0                       | \$300                    |
| <b>35-20</b> | \$603                           | \$0                       | \$300                    |
| <b>36-20</b> | \$603                           | \$0                       | \$300                    |
| <b>37-20</b> | \$603                           | \$0                       | \$0                      |
| <b>38-20</b> | \$603                           | \$0                       | \$0                      |
| <b>39-20</b> | \$603                           | \$0                       | \$0                      |
| <b>40-20</b> | \$603                           | \$0                       | \$0                      |
| <b>41-20</b> | \$603                           | \$0                       | \$0                      |
| <b>42-20</b> | \$603                           | \$0                       | \$0                      |
| <b>43-20</b> | \$603                           | \$0                       | \$0                      |
| <b>44-20</b> | \$603                           | \$0                       | \$0                      |
| <b>02-21</b> | \$603                           | \$300                     | \$0                      |
| <b>03-21</b> | \$603                           | \$300                     | \$0                      |
| <b>04-21</b> | \$603                           | \$300                     | \$0                      |
| <b>05-21</b> | \$603                           | \$300                     | \$0                      |
| <b>06-21</b> | \$603                           | \$300                     | \$0                      |
| <b>07-21</b> | \$603                           | \$300                     | \$0                      |
| <b>08-21</b> | \$603                           | \$300                     | \$0                      |
| <b>09-21</b> | \$603                           | \$300                     | \$0                      |
| <b>10-21</b> | \$603                           | \$300                     | \$0                      |

|              |                         |                |                |
|--------------|-------------------------|----------------|----------------|
| <b>11-21</b> | <b>\$81<sup>1</sup></b> | <b>\$300</b>   | <b>\$0</b>     |
| <b>Total</b> | <b>\$15,678</b>         | <b>\$9,600</b> | <b>\$1,800</b> |

(8) The Department paid benefits on each of the claims filed for the weeks at issue on or before March 22, 2021.<sup>2</sup>

(9) The earnings information claimant reported on her weekly claim forms was not accurate. On her weekly claim forms for weeks 19-20, and 21-20 through 33-20, claimant reported earning \$527.40 each week. On her weekly claim forms for weeks 34-20 through 44-20, claimant reported zero earnings each week. On her weekly claim forms for weeks 02-21 through 11-21, reported earning either \$240 or \$120 each week. On her weekly claim forms for each of the weeks at issue, claimant reported working less than full-time.

(10) However, for each of weeks 22-20, 24-20, 27-20, 28-20, 30-20, 32-20, 34-20, 36-20, 38-20, 39-20, 40-20, 42-20, 44-20, and 02-21 through 11-21, claimant worked for Home Care Workers, and also for Huntleigh USA during the weeks claimed in 2021, and received earnings that exceeded her weekly benefit amount. For week 26-20, claimant worked full-time for Home Care Workers.

(11) Similarly, for each of weeks 19-20, 21-20, 23-20, 25-20, 29-20, 31-20, 33-20, 35-20, 37-20, 41-20, and 43-20, claimant worked for Home Care Workers and received earnings in amounts that were less than her weekly benefit amount but higher than the amounts claimant reported.

| <b>Week</b>  | <b>Actual Earnings</b> | <b>Claimant's Reported Earnings</b> |
|--------------|------------------------|-------------------------------------|
| <b>19-20</b> | \$570.00               | \$527.40                            |
| <b>21-20</b> | \$570.00               | \$527.40                            |
| <b>23-20</b> | \$570.00               | \$527.40                            |
| <b>25-20</b> | \$570.00               | \$527.40                            |
| <b>29-20</b> | \$599.26               | \$527.40                            |
| <b>31-20</b> | \$599.26               | \$527.40                            |
| <b>33-20</b> | \$599.26               | \$527.40                            |
| <b>35-20</b> | \$599.26               | \$0                                 |
| <b>37-20</b> | \$599.26               | \$0                                 |
| <b>41-20</b> | \$599.26               | \$0                                 |

<sup>1</sup> Department records show that claimant was paid only \$81 in regular UI benefits for week 11-21 because, as of that week, she had only \$81 remaining before reaching the maximum benefit amount of the claim. 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 EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

<sup>2</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

|       |          |     |
|-------|----------|-----|
| 43-20 | \$599.26 | \$0 |
|-------|----------|-----|

(12) By law, claimant was not entitled to receive benefits for weeks in which her earnings exceeded her weekly benefit amount or in which she worked full-time. Claimant's unreported earnings for weeks 19-20, 21-20, 23-20, 25-20, 29-20, 31-20, 33-20, 35-20, 37-20, 41-20, and 43-20 were high enough to have the effect, by law, of reducing the amount of the benefit to which claimant was entitled each week.

(13) The weekly claim forms claimant submitted for the weeks at issue contained questions that were written in English. Claimant used various filing methods for certain of the weeks at issue, including calling the Department and speaking with a representative who walked claimant through the claim form questions. Claimant also used the Department's online claim system to submit the weekly claim forms for some weeks. On these occasions, claimant's 14-year-old daughter assisted her in submitting her claims.

(14) Because claimant reported her earnings inaccurately, the Department determined that claimant received \$13,017 in Regular UI benefits, \$6,600 in FPUC benefits, and \$900 in LWA benefits to which she was not entitled.

(15) On June 13, 2022, more than one year after allowing payment of benefits for each of the weeks at issue, the Department issued an administrative decision concluding, based on claimant's inaccurate earnings reports, that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits for the weeks at issue. The June 13, 2022 administrative decision required claimant to repay the regular UI, FPUC, and LWA overpayments, and assessed a monetary penalty and penalty disqualification weeks.

**CONCLUSIONS AND REASONS:** Claimant was overpaid benefits for the weeks at issue. Claimant did not willfully make misrepresentations to obtain benefits. Claimant is not liable for a monetary penalty or penalty weeks. Claimant is not liable to repay the overpayments because ORS 657.267(4) prohibited the Department from amending its initial decisions to allow payment of benefits to decisions for the weeks at issue assessing an overpayment.

**Remuneration.** An individual is not eligible to receive unemployment insurance benefits if they are not unemployed. ORS 657.155(1)(e) ("An *unemployed individual* shall be eligible to receive benefits with respect to any week . . .") (emphasis added). Per ORS 657.100(1), an individual is deemed "unemployed":

in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount.

For each of weeks 22-20, 24-20, 27-20, 28-20, 30-20, 32-20, 34-20, 36-20, 38-20, 39-20, 40-20, 42-20, 44-20, and 02-21 through 11-21, claimant worked and received earnings that exceeded her weekly benefit amount. Accordingly, for each of these weeks, claimant performed services (work for Home Care Workers, and, for the weeks claimed in 2021, for both employers), received remuneration for

services performed (earnings for the work performed),<sup>3</sup> and was paid more for the services performed than her weekly benefit amount. As a result, claimant was not “unemployed” during any of these weeks within the meaning of ORS 657.100(1) and therefore was not eligible for benefits for those weeks.

Similarly, for week 26-20, claimant worked 40 hours for Home Care Workers. *See* Exhibit 16 at 1. Thus, claimant worked full-time that week,<sup>4</sup> was not “unemployed” during that week within the meaning of ORS 657.100(1), and therefore was not eligible to receive benefits for that week.

In contrast, for each of weeks 19-20, 21-20, 23-20, 25-20, 29-20, 31-20, 33-20, 35-20, 37-20, 41-20, and 43-20, claimant worked for Home Care Workers and received earnings in amounts that were less than her weekly benefit amount. Therefore, claimant was not ineligible for benefits for these weeks on the basis of not being “unemployed.”

However, claimant’s weekly benefit amounts for weeks 19-20, 21-20, 23-20, 25-20, 29-20, 31-20, 33-20, and 35-20 were subject to a reduction based on the earnings claimant received during each week. ORS 657.150(6) provides:

An eligible unemployed individual who has employment in any week shall have the individual’s weekly benefit amount reduced by the amount of earnings paid or payable that exceeds whichever is the greater of the following amounts:

- (a) Ten times the minimum hourly wage established by the laws of this state; or
- (b) One-third of the individual’s weekly benefit amount.

Applying ORS 657.150(6) to weeks 19-20, 21-20, 23-20, and 25-20, claimant’s weekly benefit amount was \$603 and the applicable minimum wage for Oregon was \$12.50 per hour.<sup>5</sup> Ten times the \$12.50 per hour minimum wage is \$125. One-third of claimant’s \$603 weekly benefit amount is \$201. The greater of those two amounts is \$201. The amount of claimant’s \$570.00 earnings for of weeks 19-20, 21-20, 23-20, and 25-20 that exceeded \$201 was \$369. Claimant’s \$603 weekly benefit amount for each of weeks 19-20, 21-20, 23-20, and 25-20 is therefore reduced dollar for dollar by \$369, which equals \$234 for each week. Thus, claimant’s reduced weekly benefit amount for each of weeks 19-20, 21-20, 23-20, and 25-20 was \$234.

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<sup>3</sup> Subparts (2)(b) and (2)(c) of OAR 471-030-0017 (effective January 11, 2018) respectively state that “[e]arnings” means “remuneration” and, where an employer-employee relationship exists, “remuneration” means “compensation resulting from the employer-employee relationship, including wages[.]” Under these definitions, the earnings claimant received for work she performed for the employer during the weeks at issue constituted remuneration.

<sup>4</sup> *See* OAR 471-030-0022 (January 11, 2018) (“‘Full-time work,’ for the purposes of ORS 657.100, is 40 hours of work in a week except in those industries, trades or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.”).

<sup>5</sup> OAR 471-030-0017(2)(i) provides that “[f]or purposes of ORS 657.150(6)(a), the term “minimum hourly wage” means the minimum wage rate as computed under 653.025(2).” ORS 653.025(2)(d) establishes a \$12.50 per hour minimum wage for the Portland, Oregon metropolitan area applicable from July 1, 2019 to June 30, 2020. Weeks 19-20, 21-20, 23-20, and 25-20 occurred in May and June of 2020.

Applying ORS 657.150(6) to weeks 29-20, 31-20, 33-20, and 35-20, claimant's weekly benefit amount was \$603 and the applicable minimum wage for Oregon was \$13.25 per hour.<sup>6</sup> Ten times the \$13.25 per hour minimum wage is \$132.50. One-third of claimant's \$603 weekly benefit amount is \$201. The greater of those two amounts is \$201. The amount of claimant's \$599.26 earnings for weeks 29-20, 31-20, 33-20, and 35-20 that exceeded \$201 was \$398.26. Claimant's \$603 weekly benefit amount for each of weeks 29-20, 31-20, 33-20, and 35-20 is therefore reduced dollar for dollar by \$398.26, which equals \$204.74 and is rounded down to the next lower full dollar amount.<sup>7</sup> Thus, claimant's reduced weekly benefit amount for each of weeks 29-20, 31-20, 33-20, and 35-20 was \$204.

The ORS 657.150(6) reduction of claimant's weekly benefit amount for weeks 37-20, 41-20, and 43-20 are calculated differently because of a temporary amendment to the statute in effect during those weeks. On September 1, 2020, the Governor signed Senate Bill 1701, which, in relevant part, temporarily modified ORS 657.150(6) as follows:

An eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced, but not below zero, by the amount of earnings paid or payable that exceeds the greater of:

(a) **\$300**; or

(b) One-third of the individual's weekly benefit amount.

(emphasis added). This temporary change in the statute was effective September 6, 2020 through January 1, 2022 (weeks 37-20 through 52-21).

Applying ORS 657.150(6), as modified by Senate Bill 1701, to weeks 37-20, 41-20, and 43-20, claimant's weekly benefit amount was \$603. One-third of \$603 is \$201. The greater of \$300 and \$201 is \$300. The amount of claimant's \$599.26 earnings for weeks 37-20, 41-20, and 43-20 that exceeded \$300 was \$299.26. Claimant's \$603 weekly benefit amount for each of weeks 37-20, 41-20, and 43-20 is therefore reduced dollar for dollar by \$299.26, which equals \$303.74 and is rounded down to the next lower full dollar amount. Thus, claimant's reduced weekly benefit amount for each of weeks 37-20, 41-20, and 43-20, was \$303.

**Overpayment.** ORS 657.310(1)(a) 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

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<sup>6</sup> OAR 471-030-0017(2)(i) provides that "[f]or purposes of ORS 657.150(6)(a), the term 'minimum hourly wage' means the minimum wage rate as computed under 653.025(2)." ORS 653.025(2)(e) establishes a \$13.25 per hour minimum wage for the Portland, Oregon metropolitan area applicable from July 1, 2020 to June 30, 2021. Weeks 29-20, 31-20, 33-20, and 35-20 occurred in July and August 2020.

<sup>7</sup> ORS 657.152 states, "[n]otwithstanding any other provision of this chapter to the contrary, any amount of unemployment compensation payable to any individual for any week if not an even dollar amount, shall be rounded to the next lower full dollar amount."

statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent.

For each of weeks 22-20, 24-20, 27-20, 28-20, 30-20, 32-20, 34-20, 36-20, 38-20, 39-20, 40-20, 42-20, 44-20, and 02-21 through 11-21, claimant's weekly earnings exceeded her weekly benefit amount and she was therefore entitled to no benefits. However, for each of these weeks, claimant failed to accurately report her earnings. Because claimant reported inaccurate weekly earnings to the Department, she received regular UI benefits to which she was not entitled in the following amounts:

| <b>Week</b>   | <b>Regular UI Benefits Paid</b> | <b>Correct Benefit Amount</b> | <b>Regular UI Benefits Overpaid</b> |
|---------------|---------------------------------|-------------------------------|-------------------------------------|
| <b>22-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>24-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>27-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>28-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>30-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>32-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>34-20</b>  | \$276                           | \$0                           | \$276                               |
| <b>36-20</b>  | \$603                           | \$0                           | \$603                               |
| <b>38-20</b>  | \$603                           | \$0                           | \$603                               |
| <b>39-20</b>  | \$603                           | \$0                           | \$603                               |
| <b>40-20</b>  | \$603                           | \$0                           | \$603                               |
| <b>42-20</b>  | \$603                           | \$0                           | \$603                               |
| <b>44-20</b>  | \$603                           | \$0                           | \$603                               |
| <b>02-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>03-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>04-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>05-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>06-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>07-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>08-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>09-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>10-21</b>  | \$603                           | \$0                           | \$603                               |
| <b>11-21</b>  | \$81                            | \$0                           | \$81                                |
| <b>Total:</b> |                                 |                               | <b>\$11,058</b>                     |

Similarly, for week 26-20, claimant was not "unemployed" during that week within the meaning of ORS 657.100(1) and therefore was not eligible to receive benefits for that week. Claimant failed to accurately report her hours and earnings for week 26-20 to the Department. Because claimant inaccurately reported that she worked less than full-time that week, she received regular UI benefits to which she was not entitled in the amount of \$276 for week 26-20.

For each of weeks 19-20, 21-20, 23-20, 25-20, 29-20, 31-20, 33-20, 35-20, 37-20, 41-20, and 43-20, claimant's weekly earnings subjected her to a benefit amount reduction. However, for each of these weeks, claimant failed to accurately report her earnings. Because claimant reported inaccurate weekly earnings to the Department, her benefit amount for each week was not reduced as much as was required



by law. Claimant therefore received regular UI benefits to which she was not entitled in the following amounts:

| Week          | Regular UI Benefits Paid | Correct Benefit Amount | Regular UI Benefits Overpaid |
|---------------|--------------------------|------------------------|------------------------------|
| 19-20         | \$276                    | \$234                  | \$42                         |
| 21-20         | \$276                    | \$234                  | \$42                         |
| 23-20         | \$276                    | \$234                  | \$42                         |
| 25-20         | \$276                    | \$234                  | \$42                         |
| 29-20         | \$276                    | \$204                  | \$72                         |
| 31-20         | \$276                    | \$204                  | \$72                         |
| 33-20         | \$276                    | \$204                  | \$72                         |
| 35-20         | \$603                    | \$204                  | \$399                        |
| 37-20         | \$603                    | \$303                  | \$300                        |
| 41-20         | \$603                    | \$303                  | \$300                        |
| 43-20         | \$603                    | \$303                  | \$300                        |
| <b>Total:</b> |                          |                        | <b>\$1,683</b>               |

All told, claimant was overpaid regular UI benefits for the weeks at issue in the amount of \$13,017 (\$11,058 + \$276 + \$1,683 = \$13,017). This overpayment is governed by ORS 657.310(1)(a) because claimant's inaccurate earnings reports caused her to receive the benefits, regardless of claimant's knowledge or intent when she reported the inaccurate earnings.

Claimant was also overpaid FPUC benefits. *See* 15 U.S.C. § 9023. FPUC was a federal benefits program that provided eligible individuals with an additional \$600 per week, in addition to their regular UI weekly benefit amount, during the period of March 29, 2020, through July 25, 2020 (weeks 14-20 through 30-20). FPUC provided eligible individuals an additional \$300 per week, in addition to their regular UI 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 \$600 or \$300 FPUC benefit if they were eligible to receive at least one dollar of regular UI benefits for the claimed week. IPL 15-20 at I-5.

As depicted in the chart below, because claimant was not eligible for at least one dollar of regular UI benefits for weeks 22-20, 24-20, 26-20, 27-20, 28-20, 30-20, and 02-21 through 11-21, she also was ineligible for FPUC benefits for those weeks. *See* IPL 15-20 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.").

| Week  | Regular UI Benefits Eligibility | FPUC Benefits Overpaid |
|-------|---------------------------------|------------------------|
| 22-20 | \$0                             | \$600                  |
| 24-20 | \$0                             | \$600                  |
| 26-20 | \$0                             | \$600                  |
| 27-20 | \$0                             | \$600                  |

|               |     |                |
|---------------|-----|----------------|
| <b>28-20</b>  | \$0 | \$600          |
| <b>30-20</b>  | \$0 | \$600          |
| <b>02-21</b>  | \$0 | \$300          |
| <b>03-21</b>  | \$0 | \$300          |
| <b>04-21</b>  | \$0 | \$300          |
| <b>05-21</b>  | \$0 | \$300          |
| <b>06-21</b>  | \$0 | \$300          |
| <b>07-21</b>  | \$0 | \$300          |
| <b>08-21</b>  | \$0 | \$300          |
| <b>09-21</b>  | \$0 | \$300          |
| <b>10-21</b>  | \$0 | \$300          |
| <b>11-21</b>  | \$0 | \$300          |
| <b>Total:</b> |     | <b>\$6,600</b> |

Therefore, all told, claimant was overpaid FPUC benefits in the amount of \$6,600. This overpayment is governed by ORS 657.310(1)(a) because claimant's inaccurate earnings reports caused her to receive the benefits, regardless of claimant's knowledge or intent when she reported the inaccurate earnings.

In addition, claimant was overpaid LWA benefits. LWA was a federal benefits program that provided eligible individuals with an additional \$300 per week, in addition to their regular UI weekly benefit amount, during the period of July 26, 2020, through September 5, 2020 (weeks 31-20 through 36-20).

Section 5174 of the Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207, confers authority on the President of the United States to provide financial assistance to individuals who, as a direct result of a major disaster, have necessary expenses and serious needs and are unable to meet such expenses or needs through other means. Under the provisions of Section 262(a) of the Continued Assistance for Unemployed Workers Act of 2020,<sup>8</sup> Congress defined "covered assistance" to mean supplemental lost wages payments made by the President under an emergency declaration related to the COVID-19 pandemic and pursuant to the authority of the Stafford Disaster Relief Act. Section 4(d) of the Presidential Memorandum Authorizing the Other Needs Assistance Program for Major Disaster Declaration Related to Coronavirus Disease 2019, available at, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/>, provides as follows:

- (d) For purposes of this memorandum, the term "Eligible claimants" means claimants who:
  - (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
    - (A) Unemployment compensation . . . [and]

\*\*\*

- (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.

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<sup>8</sup> The Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 was signed into law on December 27, 2020.

As depicted in the chart below, because claimant was not eligible for at least \$100 of regular UI benefits for weeks 32-20, 34-20, and 36-20, she also was ineligible for LWA benefits for those weeks.

| Week          | Regular UI Benefits Eligibility | LWA Benefits Overpaid |
|---------------|---------------------------------|-----------------------|
| 32-20         | \$0                             | \$300                 |
| 34-20         | \$0                             | \$300                 |
| 36-20         | \$0                             | \$300                 |
| <b>Total:</b> |                                 | <b>\$900</b>          |

Therefore, all told, claimant was overpaid LWA benefits in the amount of \$900. This overpayment is governed by ORS 657.310(1)(a) because claimant's inaccurate earnings reports caused her to receive the benefits, regardless of claimant's knowledge or intent when she reported the inaccurate earnings.

**Misrepresentation.** An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. An individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

Although claimant's regular UI, FPUC, and LWA overpayments were caused by her inaccurate earnings reports, the record does not show that claimant made the inaccurate earnings reports willfully to obtain benefits. The order under review concluded that for 21 of the weeks at issue, weeks 34-20 through 44-20 and weeks 02-21 through 11-21, claimant misreported her earnings to the Department willfully to obtain benefits. Order No. 25-UI-279848 at 19-21. The record does not support this conclusion.

First, the Department bears the burden to prove that claimant willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits. *See Cook v. Employment Division*, 47 Or. App. 437 (1980). The Department failed to meet that burden. The Department was absent from the sessions of the hearing during which the ALJ took testimony on the misrepresentation issue (December 16, 2024 and January 2, 2025), and therefore offered no testimonial evidence on that issue. The documentary evidence the Department submitted, Exhibits 11 through 17 and 20 through 27, is not sufficient to prove claimant acted with the mental state necessary to establish willful misrepresentation. The documents primarily go to the fact that claimant was overpaid benefits. The documents include a one-page investigator's fact finding note, but that document is inadequate to satisfy the Department's burden to prove willful misrepresentation. *See Exhibit 20 at 1.*

Moreover, the record suggests that claimant's inaccurate earnings reports may have been the result of confusion owing to claimant's lack of English proficiency and information provided to her by the Department. Claimant's primary language was Amharic, and she had limited English proficiency. At hearing, claimant testified that she contacted the Department in March or April 2020, after she was laid off from her job at the airport, and was advised that she "qualified for unemployment and . . . [was] free to apply." January 2, 2025 Transcript at 10. Claimant stated that in May 2020, a Department representative called claimant and she told them she had two jobs and was still working at one of them, but the Department representative informed claimant she was still qualified. January 2, 2025 Transcript

at 11. Claimant understood from this call that because of the COVID-19 pandemic, “it was okay to get paid for the . . . unemployment insurance because [her] income [was] reduced[.]” January 2, 2025 Transcript at 21. Claimant further testified that she knew she was “employed and working” but “didn’t know that [she] . . . should report the home care income . . . because [she] was told [she] qualified for the . . . unemployment insurance.” January 2, 2025 Transcript at 20.

Furthermore, the record shows that the weekly claim form questions are written in English. *See* Exhibit 26 at 1-2; Exhibit 27 at 1. Claimant did not understand written English and used different weekly claim filing methods for certain of the weeks at issue. These factors might explain why claimant reported inaccurate earnings for certain weeks.

For example, for weeks 19-20, and 21-20 through 33-20, claimant reported earning \$527.40 each week. Exhibit 10 at 4. Then, from week 34-20 through 44-20, claimant reported zero earnings each week. Exhibit 10 at 4-5. Thereafter, there was a break in continuous claiming, and claimant resumed claiming weeks 02-21 through 11-21, reporting earning either \$240 or \$120 each week. Exhibit 10 at 5. However, Department records show that for weeks 19-20, and 21-20 through 33-20 claimant claimed each week by calling the Department and either speaking with a representative who walked claimant through the claim form questions for each week, or, in the case of week 21-20, following the prompts of an interactive voice response system.<sup>9</sup> For weeks 34-20 through 44-20, however, Department records show that claimant claimed using the Department’s online claims system.<sup>10</sup> After the break in continuous claiming, claimant also used the online claims system to claim benefits for weeks 02-21 through 11-21.<sup>11</sup>

At hearing, claimant testified that when she filed online, she did so with the assistance of her 14-year-old daughter. January 2, 2025 Transcript at 16. When filing online, claimant would not have been able to read the claim form questions written in English, and the assistance of her daughter may have contributed to her failing to report any earnings for weeks 34-20 through 44-20 and inaccurate earnings for weeks 02-21 through 11-21.

Thus, the record contains evidence suggesting that claimant may have provided inaccurate earnings information due to a misunderstanding or because of English proficiency limitations. The Department therefore failed to meet their burden to prove that claimant made the inaccurate earnings reports

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<sup>9</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

<sup>10</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

<sup>11</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

willfully to obtain benefits. Accordingly, this is not a case of willful misrepresentation, and claimant is not liable for a monetary penalty or any penalty disqualification weeks.

**Lack of Authority to Amend Allowing Decisions.** 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.)

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 the claims on or before March 22, 2021. The Department amended those decisions to a denial of payment, more than one year later, on June 13, 2022.

The order under review concluded that claimant was overpaid benefits for those weeks. Order No. 25-UI-279848 at 15-16. As previously explained, the record supports this conclusion. Further, the order under review implicitly concluded that the Department had authority to amend the original decisions allowing payment of those benefits to a decision denying benefits more than one year later because it was a case of willful misrepresentation. *See* Order No. 24-UI-279848 at 19-21. As previously discussed,

the Department did not meet its burden to show that the overpayment was the result of willful misrepresentation to obtain benefits.

Pursuant to ORS 657.267(4), except in “cases of alleged willful misrepresentation or fraud,” the Department had one year to amend the original decisions allowing benefits. Here, the payment of benefits for the weeks at issue occurred on or before March 22, 2021, more than one year before the June 13, 2022 administrative decision was issued. Therefore, the Department’s authority to make that amendment and, in turn, claimant’s liability to repay the resulting overpayment, is dependent on whether the “willful misrepresentation or fraud” exception to the one-year limitation applies.

Though the Department alleged willful misrepresentation caused the overpayment, if reversed on appeal, the *allegation* ceases to exist, and the exception to the one-year limitation no longer applies. In such situations, the Department lacks authority to assess an overpayment, despite the overpayment having been assessed with an allegation of willful misrepresentation. Accordingly, with respect to the overpayment of benefits for the weeks at issue, claimant is not liable for repayment because EAB’s decision here reverses the finding of willful misrepresentation.

For these reasons, claimant is not liable to repay the \$13,017 overpayment of regular UI benefits, the \$6,600 overpayment of FPUC benefits, or the \$900 overpayment of LWA benefits because ORS 657.267(4) prohibited the Department from amending its initial decisions to allow payment of benefits to decisions for those weeks assessing an overpayment. Moreover, because claimant did not make a willful misrepresentation to obtain benefits, claimant is not liable for a monetary penalty or penalty disqualification weeks.

**DECISION:** Order No. 25-UI-279848 is modified, as outlined above.

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

**DATE of Service:** February 25, 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.

**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 دستورالعمل 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](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

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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.