

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0096

Affirmed
Overpayment Waiver Granted

PROCEDURAL HISTORY: On September 20, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for a waiver of recovery of a combined \$3,726 overpayment of Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # L0006177789). Claimant filed a timely request for hearing. On January 28, 2025, ALJ Enyinnaya conducted a hearing which was interpreted in Tigrinya, and at which the Department failed to appear. On February 5, 2025, ALJ Enyinnaya issued Order No. 25-UI-282059, reversing decision # L0006177789 by concluding that claimant's waiver request should be granted and the Department was required to waive recovery of the \$3,726 combined PEUC and FPUC overpayment. On February 14, 2024, the Department filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant's primary language was Tigrinya.

(2) In 2020, following the onset of the COVID-19 pandemic, claimant's work hours were reduced, and she filed an initial claim for regular unemployment insurance (regular UI) benefits. The Department determined claimant had a monetarily valid claim for benefits. Thereafter, claimant claimed and was paid benefits for numerous weeks during 2020 and 2021.

(3) At some point in 2021, claimant exhausted the maximum benefit amount of her regular UI claim and the Department converted her claim to a PEUC claim. For each week claimant claimed and received PEUC benefits, she also received FPUC benefits.

(4) For each week that claimant claimed benefits, claimant was required to complete a weekly claim form, which was written in English. The claim forms contained questions asking whether claimant had actively looked for work and to record her work search activities for the week.¹

¹ EAB has taken notice of the facts contained in this paragraph, 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

(5) During the COVID-19 pandemic, the Department adopted temporary rules that permitted claimants to answer affirmatively on their weekly claim forms that they had actively looked for work if they were willing to look for work when state and local emergency declarations related to the coronavirus expired. These temporary rules were subject to being revoked as to individual claimants, if an individual claimant was notified in writing by the Department.²

(6) Beginning the week of July 25, 2021, through July 31, 2021 (week 30-21), the Department began sending letters to individual claimants, notifying them in writing that the temporary rule was being revoked and they were required to actively seek work.³

(7) Claimant claimed PEUC benefits for the weeks of July 25, 2021, through September 4, 2021 (weeks 30-21 through 35-21). During these weeks, claimant was either pregnant or had just given birth to her daughter and was not actively searching for work.

(8) On her weekly claim forms for weeks 30-21 through 35-21, claimant answered affirmatively that she had actively looked for work and did not list any work search activities for the weeks, as was permitted by the Department's temporary rules, absent being revoked by the Department by individually notifying claimant in writing.⁴

(9) The Department paid claimant \$321 in PEUC benefits and \$300 in FPUC benefits for each of weeks 30-21 through 35-21, for a total of \$3,726 in combined PEUC and FPUC benefits.

(10) On March 4, 2022, the Department issued decision # 135844, concluding that claimant was not eligible to receive benefits for weeks 30-21 through 35-21 because she had failed to actively seek work. On May 31, 2023, claimant filed a late request for hearing on decision # 135844. On November 22, 2023, the Office of Administrative Hearings (OAH) issued Order No. 23-UI-241779, dismissing claimant's hearing request on decision # 135844 as late without good cause, subject to claimant renewing the request by submitting a response to an appellant questionnaire. On December 12, 2023,

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 facts will remain in the record.

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³ EAB has taken notice of the facts contained in this paragraph, 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 facts will remain in the record.

⁴ EAB has taken notice of the facts contained in this paragraph, 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 facts will remain in the record.

Order No. 23-UI-241779 became final without claimant having filed an appellant questionnaire response or an application for review with EAB.⁵

(11) On July 7, 2022, the Department issued decision # 164557, which, based in part on decision # 135844, concluded that claimant received PEUC and FPUC benefits to which she was not entitled, and assessed an overpayment of \$3,726 in combined PEUC and FPUC benefits that claimant was required to repay to the Department. Decision # 164557 alleged that claimant had failed to disclose that she was not actively seeking work when she claimed weeks 30-21 through 35-21. On May 31, 2023, claimant filed a late request for hearing on decision # 164557. On September 12, 2023, claimant failed to appear for the hearing scheduled in the matter, and OAH issued Order No. 23-UI-235671, dismissing the hearing request based on claimant's failure to appear. Claimant moved to reopen the hearing and a new hearing was held. On July 17, 2024, OAH issued Order No. 24-UI-259406, which allowed the reopen request but dismissed claimant's hearing request as late without good cause. On August 6, 2024, Order No. 24-UI-259406 became final without claimant having an application for review with EAB.⁶

(12) Claimant had no income due to being out of work since 2022 because of her daughter's poor health. Claimant lived in government housing and received assistance via the Temporary Assistance for Needy Families (TANF) and food stamps programs. On July 29, 2024, claimant submitted a waiver request for the \$3,726 combined PEUC and FPUC overpayment to the Department. Claimant was receiving TANF assistance at the time she filed the waiver request.

CONCLUSIONS AND REASONS: Claimant's waiver request is granted. The Department is required to waive claimant's \$3,726 overpayment of combined PEUC and FPUC benefits.

Waiver of PEUC and FPUC overpayments are governed by the provisions of 15 U.S.C. § 9025(e)(2)(A)-(B) and 15 U.S.C. § 9023(f)(2)(A)-(B), respectively. For waiver to be granted, both provisions require (1) that the overpayment of PEUC and FPUC benefits be without fault on the part of the claimant and (2) that repayment be contrary to equity and good conscience.

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

⁵ EAB has taken notice of the facts contained in this paragraph, 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 facts will remain in the record.

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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.

Claimant is entitled to a waiver of her overpayment of \$3,726 in combined PEUC and FPUC benefits because the record supports that the overpayment was without fault on the part of the claimant, and that repayment would be contrary to equity and good conscience. Under UIPL 20-21 Change 1, a PEUC and FPUC overpayment may be without fault on the part of an individual if the individual gave incorrect information because of confusing or changing instructions or similar difficulties, such as language barriers. That is what occurred here.

Tigrinya is claimant’s primary language, and the weekly claim forms for weeks 30-21 through 35-21 were written in English. The questions on those forms that called for claimant to state whether she had actively looked for work and to list her work search activities did not request the information in Tigrinya. Further, a temporary rule in place at the time relieved claimant of the duty to actively seek work and permitted her to answer affirmatively on her claim forms that she had actively sought work, so long as she was willing to look for work when state and local emergency declarations related to the coronavirus expired, unless the Department otherwise notified her in writing. Beginning week 30-21, the Department began sending written notifications to individual claimants that their duty to actively seek work was resuming. Although the Department presumably sent claimant such a notification, since it regarded her as required to actively seek work during weeks 30-21 through 35-21, there is no indication in the record that such a notification would have been written in Tigrinya. The revocation of the temporary rule via a notification not written in claimant’s primary language amounted to changing or confusing information. Therefore, the record shows that claimant’s submission of incorrect information which resulted in the overpayment of benefits was due, in substantial part, to a language barrier and changing or confusing instructions by the Department. The evidence is therefore sufficient to meet the “without fault” element of the federal overpayment waiver standard.

The record likewise shows that repayment of the overpayment would be contrary to equity and good conscience. Although, under UIPL 20-21 Change 1, the Department had the option to use either the state standard or the federal standard in defining what it means for repayment to be contrary to equity and good conscience, the record is silent as to which approach the Department selected. The Department failed to appear at hearing and decision # L0006177789’s denial of waiver was premised on the “without fault” element of the analysis. *See* Exhibit 1 at 13 (“We are not waiving this because we are required to recover overpayments on federal programs when you were at least partially at fault for the overpayment.”).

In the absence of evidence to the contrary, it is reasonable to conclude that the Department opted to apply the federal standard, given that the FPUC program is a federal benefits program. Applying the federal approach, the record shows that repayment would be contrary to equity and good conscience because recovery would cause financial hardship to claimant. Claimant had no income due to being out of work since 2022 because of her daughter's poor health. Claimant lived in government housing and received assistance via the TANF and food stamps programs. Because claimant had no income, requiring her to repay the \$3,756 combined PEUC and FPUC overpayment would impose a financial hardship on her.

Even if the state approach is used, the result would be the same. Under OAR 471-030-0053(3)(b)(B)(iii) (June 23, 2024), in the case of a claimant fault non-fraud overpayment, an overpayment is against equity and good conscience if the individual seeking waiver is receiving TANF assistance at the time the waiver request is submitted.⁷ Claimant's circumstances meet these criteria. Decision # 164557, the administrative decision that established claimant's \$3,756 combined PEUC and FPUC overpayment, was a claimant fault non-fraud overpayment, and claimant was receiving TANF assistance at the time she submitted her waiver request on July 29, 2024.

Accordingly, the \$3,726 overpayment of combined PEUC and FPUC benefits was, within the meaning federal guidance, without fault on the part of claimant. Furthermore, repayment of the overpayment would be contrary to equity and good conscience. Therefore, the waiver request is granted and the Department is required to waive recovery of claimant's \$3,726 overpayment of combined PEUC and FPUC benefits.

DECISION: Order No. 25-UI-282059 is affirmed.

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

DATE of Service: March 12, 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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⁷ See OAR 471-030-0053(3)(b)(B)(iii) ("Overpayments will be waived if recovery of benefits is against equity and good conscience based on the following criteria The individual has a claimant fault non-fraud overpayment and . . . is receiving TANF at the time the waiver request is submitted.").



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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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.