

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0175

Modified
State and Federal Overpayment Waivers Granted

PROCEDURAL HISTORY: On September 17, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for a waiver of recovery of an overpayment of \$3,586 of regular unemployment insurance (regular UI) benefits and a combined \$11,989 overpayment of Pandemic Emergency Unemployment Compensation (PEUC), Lost Wages Assistance (LWA) benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # L0006357872). Claimant filed a timely request for hearing. On February 25, 2025, ALJ Enyinnaya conducted a hearing, and on March 5, 2025, issued Order No. 25-UI-284908, modifying decision # L0006357872 by concluding that claimant's waiver request should be granted as to the PEUC, LWA, and FPUC overpayments, but in the amounts of \$3,912, \$1,800, and \$11,100, respectively,¹ and appearing to not rule on whether waiver of the regular UI overpayment should be granted. On March 18, 2025, the Department filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the Department's argument in reaching this decision.

FINDINGS OF FACT: (1) Prior to mid-March 2020, claimant worked as a cook and host for an employer that operated a restaurant. On March 17, 2020, upon the onset of the COVID-19 pandemic and pursuant to an order issued by Oregon's governor, claimant's employer shut down their restaurant and laid off claimant and their other employees.

¹ At hearing, the Department's witness testified that the overpayment amounts that appear on decision # L0006357872 were incorrect and that the accurate overpayment amounts were \$3,586 of regular UI benefits, \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits. Transcript at 5.

(2) On April 4, 2020, claimant filed an initial claim for regular UI benefits. When he did so, claimant accurately listed his work separation type as lack of work. The Department determined claimant had a valid claim for benefits with a first effective week of March 29, 2020 (week 14-20) and a weekly benefit amount of \$163. Claimant claimed and received benefits for weeks 14-20 and for the next several weeks through April 25, 2020.

(3) As of April 26, 2020, the employer's restaurant still was not authorized to open. On April 26, 2020, the employer sent claimant a text message requesting he do demolition work at the restaurant. When he received the text message, "[i]t was a confusing time with COVID and what was happening in the world[.]" Transcript at 13. Because it was only about a month into the COVID-19 pandemic, "[e]verything was shut down" and claimant "didn't feel comfortable coming back." Transcript at 14. Claimant was uncertain as to his status with the employer's restaurant because the demolition work offered was of a different nature than the work he had done before the pandemic as a cook and host. Exhibit 2 at 3. On or about April 27, 2020, claimant replied to the text message declining the work. Exhibit 2 at 3.

(4) On May 4, 2024, claimant claimed benefits for the week of April 26, 2020, through May 2, 2020 (week 18-20). When he did so, claimant answered "no" to a question on the claim form that asked, "Did you quit a job last week?"²

(5) In addition to week 18-20, claimant claimed benefits for the weeks including May 3, 2020, through March 13, 2021 (weeks 19-20 through 10-21). Weeks 18-20 through 10-21 are the weeks at issue. Claimant received \$3,586 in regular UI benefits, \$3,912 in PEUC benefits, \$1,800 in LWA benefits, and \$11,100 in FPUC benefits for the weeks at issue.

(6) The Department regarded the fact that claimant had declined the demolition work at the restaurant as a voluntary quit. On March 22, 2021, the Department issued decision # 142829, concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective April 26, 2020. Claimant appealed decision # 142829 and, following a hearing, the Office of Administrative Hearings (OAH), issued Order No. 21-UI-172518, affirming decision # 142829. On September 2, 2021, Order No. 21-UI-172518 became final without claimant having filed an application for review with EAB.³

(7) The Department regarded the fact that claimant had answered "no" to the claim form question, "Did you quit a job last week?" as a false statement claimant made willfully to obtain benefits. Had claimant answered "yes" to that question, the Department would have investigated the work separation, concluded, as decision # 142829 had, that claimant quit work without good cause, and not paid claimant

² 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.

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.

for the weeks at issue. On December 8, 2021, the Department issued a fraud overpayment administrative decision, based in part on decision # 142829, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a regular UI overpayment and a combined federal program overpayment that claimant was required to repay to the Department, a monetary penalty, and a multiple week penalty disqualification from future benefits.⁴

(8) Claimant appealed the December 8, 2021, fraud overpayment decision. On August 7, 2024, OAH issued Order No. 24-UI-261806, modifying the December 8, 2021, decision by concluding that claimant had not made a false statement willfully to obtain benefits and was not liable for a monetary penalty or penalty disqualification, but was liable to repay a \$3,586 overpayment of regular UI benefits, a \$3,912 overpayment of PEUC benefits, a \$1,800 overpayment of LWA benefits, and an \$11,100 overpayment of FPUC benefits for the weeks at issue. *See Exhibit 2 at 11.*

(9) On August 9, 2024, claimant submitted to the Department an application for waiver of recovery of the regular UI overpayment and the overpayments of PEUC, LWA, and FPUC benefits. On September 17, 2024, the Department issued decision # L0006357872, denying claimant's request for a waiver of recovery of the overpayments. Claimant appealed and, following a hearing, ALJ Enyinnaya issued Order No. 25-UI-284908, reversing decision # L0006177789 by concluding that claimant's waiver request should be granted as to the PEUC, LWA, and FPUC overpayments, but appearing to not rule on whether waiver of the regular UI overpayment should be granted.

(10) Claimant had zero wages reported to the Department in the four calendar quarters preceding the August 9, 2024, waiver request.⁵ His monthly income was \$2,008 at the time of the request. Claimant paid \$900 per month for rent, about \$250 per month for utilities, \$100 per month for his cell phone, \$60 per month for internet, \$250 per month for a car payment, and \$40 per month for car insurance.

CONCLUSIONS AND REASONS: Claimant's state and federal waiver requests are granted. The Department is required to waive claimant's overpayments of \$3,586 in regular UI benefits, \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits.

The order under review concluded that claimant's waiver request should be granted as to the PEUC, LWA, and FPUC overpayments. Order No. 25-UI-284908 at 6. However, although the order mentioned claimant's receipt of \$3,586 of regular UI benefits in its findings of fact, and cited to law governing the standard for waiving overpayment of state unemployment insurance benefits, the order appeared to not rule on whether waiver of the regular UI overpayment should be granted. Order No. 25-UI-284908 at 1, 3. The record supports granting claimant's request for waiver both as to his Regular UI overpayment and as to his PEUC, LWA, and FPUC overpayments.

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.

⁵ EAB has taken notice of this fact, which is 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.

Regular UI Overpayment Waiver. In the context of state unemployment insurance benefits programs, such as regular UI, under ORS 657.317(2)(a), the Department “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 Department finds “that recovery of the benefits would be against equity and good conscience.” Per ORS 657.317(2)(b), the Department may not waive recovery of overpaid benefits that are subject to the penalty imposed under ORS 657.310(2). ORS 673.310(2) provides for the assessment of monetary penalties when an overpayment results from fraud, that is, from an individual having willfully made a misrepresentation to obtain benefits pursuant to ORS 657.215.

Thus, fraud overpayments, overpayments that arise under ORS 657.310(2), may not be waived. However, claimant fault non-fraud overpayments and non-fault overpayments—overpayments that arise under ORS 657.310(1) and ORS 657.315(1), respectively—may be waived, so long as recovery would not be against equity and good conscience.

In the context of state unemployment insurance benefits programs, OAR 471-030-0053(3) (effective June 23, 2024), governs whether recovering overpaid benefits is against equity and good conscience. That administrative rule states, in pertinent 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

* * *

(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[.]

* * *

Here, claimant’s \$3,586 overpayment of regular UI benefits was a claimant fault non-fraud overpayment arising under ORS 657.310(1). This is so because, on August 7, 2024, OAH issued Order No. 24-UI-261806, modifying the December 8, 2021, fraud overpayment administrative decision by concluding that claimant had not made a false statement willfully to obtain benefits and was not liable for a monetary penalty or penalty disqualification, but was liable to repay the regular UI overpayment and the PEUC, LWA, and FPUC overpayments. Thus, Order No. 24-UI-261806 had the effect of converting claimant’s regular UI overpayment type into an ORS 657.310(1) claimant fault non-fraud overpayment,

for which waiver is available, so long as recovering the overpaid benefits is against equity and good conscience.

Applying OAR 471-030-0053(3)(b)(B)(i), recovery would be against equity and good conscience. Department records show that claimant had zero reported wages in the four calendar quarters preceding the August 9, 2024, waiver request. Therefore, his reported wages in those four quarters are necessarily less than 200% of the federal poverty level for a family of four. As claimant had a claimant fault non-fraud overpayment and reported wages in the last four quarters that are less than 200% of the federal poverty level for a family of four, his circumstances meet the requirements of OAR 471-030-0053(3)(b)(B)(i), and recovery of his \$3,586 regular UI overpayment would be against equity and good conscience.

For these reasons, the waiver request is granted and the Department is required to waive recovery of claimant's \$3,586 overpayment of regular UI benefits.

Overpayment Waiver for Federal Benefits Programs. The overpayment waiver standard is different for federal benefits programs. 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. Section 262(b) of the Continued Assistance for Unemployed Workers Act of 2020 sets forth the same elements for waiver of overpayments of LWA 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 9-10 (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.

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 his overpayment of \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits because the record supports that the overpayments were 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, federal benefits program overpayments may be without fault on the part of an individual if the individual gave incorrect information because of confusing information or instructions. That is what occurred here.

When, while claiming benefits for week 18-20, claimant answered “no” to the claim form question, “Did you quit a job last week?”, he gave incorrect information. This is the case because, as concluded by decision # 142829 and affirmed by Order No. 21-UI-172518, the fact that claimant had declined the demolition work at the restaurant was a voluntary quit. However, under the circumstances that existed at the time claimant answered the question, amid the early period of the COVID-19 pandemic, his employment status was ambiguous. As of April 26, 2020, the date the employer sent claimant a text message requesting he do demolition work at the restaurant, the restaurant remained closed pursuant to a mandatory COVID-19 safety order. Claimant testified at hearing that when he received the message, “[i]t was a confusing time with COVID and what was happening in the world[.]” Transcript at 13. It was only about a month into the COVID-19 pandemic at that point, and “[e]verything was shut down[.]” Transcript at 14. Claimant was uncertain about his status with the employer’s restaurant because the demolition work offered was of a different nature than the work he had done before the pandemic as a cook and host. Exhibit 2 at 3. Based on the foregoing, the incorrect information claimant gave on the weekly claim form for week 18-20 that resulted in the overpayment of benefits was the product of confusion for which he was not at fault for purposes of waiver of the PEUC, FPUC, and LWA overpayments. 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, as decision # L0006357872’s denial of waiver was premised on the “without fault” element of the analysis. *See* Exhibit 1 at 7 (“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 would apply the federal standard, given that the PEUC, FPUC, and LWA programs are federal benefits programs. 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. His monthly income was \$2,008, but his monthly expenses totaled \$1,600. Because claimant’s monthly expenses accounted for the vast majority of his monthly income, requiring him to repay the \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits would impose a financial hardship on him.

Even if the state approach is used, the result would be the same. Under OAR 471-030-0053(3)(b)(B)(i), as discussed above, in the case of a claimant fault non-fraud overpayment, an overpayment is against equity and good conscience if the individual seeking waiver 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. As claimant’s overpayment type was an ORS 657.310(1) claimant fault non-fraud overpayment and claimant had zero

reported wages in the four calendar quarters preceding the August 9, 2024, waiver request, claimant's circumstances meet these criteria.

Accordingly, the overpayments of \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits were, within the meaning of federal guidance, without fault on the part of claimant. Furthermore, repayment of the overpayments would be contrary to equity and good conscience. The waiver request is therefore granted and the Department is required to waive recovery of claimant's overpayments of \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits.

In summary, for the reasons outlined above, the Department is required to waive recovery of claimant's \$3,586 overpayment of regular UI benefits. The Department is also required to waive recovery of claimant's overpayments of \$3,912 of PEUC benefits, \$1,800 of LWA benefits, and \$11,100 of FPUC benefits. Order No. 25-UI-284908 is modified accordingly.

DECISION: Order No. 25-UI-284908 is modified, as outlined above.

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

DATE of Service: April 23, 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 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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

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.