

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0198

*Order No. 25-UI-286031 – Modified – Late Request for Hearing Allowed – No Overpayment
Application for Review of Order No. 25-UI-286456 Dismissed – No Justiciable Controversy*

PROCEDURAL HISTORY: On April 19, 2022, the Department served notice of an administrative decision concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$6,021 in regular unemployment insurance (regular UI) benefits and \$4,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 103455). On May 9, 2022, decision # 103455 became final without claimant having filed a request for hearing.

On May 7, 2024, the Department served notice of an administrative decision allowing claimant's request for a waiver of recovery of an overpayment of \$5,619 of regular UI benefits and denying claimant's request for a waiver of recovery of an overpayment of \$4,200 of FPUC benefits (decision # L0003986051). On May 17, 2024, claimant filed a late request for hearing on decision # 103455. On May 23, 2024, claimant filed a timely request for hearing on decision # L0003986051.

ALJ Scott considered claimant's request on decision # 103455, and on July 24, 2024, issued Order No. 24-UI-260173, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 7, 2024. On August 10, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-260173 with the Employment Appeals Board (EAB). On August 23, 2024, EAB issued EAB Decision 2024-EAB-0593, reversing Order No. 24-UI-260173 and remanding for a hearing on whether to allow claimant's late request for hearing and, if so, the merits of decision # 103455.

On September 25, 2024, ALJ Chiller conducted a hearing on decision # L0003986051. On November 1, 2024, ALJ Chiller conducted a hearing on claimant's late appeal of decision # 103455 and the merits of that decision.

On March 14, 2025, ALJ Chiller issued Order No. 25-UI-286031, allowing claimant's late request for hearing and affirming decision # 103455. On March 18, 2025, ALJ Chiller issued Order No. 25-UI-286456, modifying decision # L0003986051 by concluding that claimant's request for a waiver of recovery of FPUC benefits should be denied in the amount of \$4,800. On March 29, 2025, claimant filed applications for review of Orders No. 25-UI-286031 and 25-UI-286456 with EAB.

EAB combined its review of Orders No. 25-UI-286031 and 25-UI-286456 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0198 and 2025-EAB-0199).

WRITTEN ARGUMENT: Claimant submitted written arguments on April 3, 2025. The arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's arguments that were based on the hearing record.

EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-286031 allowing claimant's late request for hearing on decision # 103455. That part of Order No. 25-UI-286031 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) On May 18, 2020, claimant filed an initial claim for regular UI benefits. The Department determined that claimant had a monetarily valid claim for regular UI benefits with a weekly benefit amount of \$402.

(2) On June 2, 2020, claimant voluntarily quit working for an employer. Claimant claimed benefits for the week of May 31, 2020, through June 6, 2020 (week 23-20). When he did so, he was asked on his weekly claim form if he had quit a job that week. Claimant answered "no." Had claimant answered "yes," the Department would have suspended payment for week 23-20 and any later weeks claimed, pending an investigation into whether claimant was disqualified from receiving benefits because of the voluntary leaving.

(3) The Department paid claimant for week 23-20. Claimant also claimed and was paid benefits for the weeks of June 7, 2020, through August 29, 2020 (weeks 24-20 through 35-20) and the weeks of September 6, 2020, through September 19, 2020 (weeks 37-20 through 38-20). Weeks 23-20 through 35-20 and 37-20 through 38-20 are the weeks at issue.

(4) The Department paid claimant \$402 of regular UI benefits for each of the weeks at issue except week 38-20. The Department paid claimant \$393 of regular UI benefits for week 38-20. For each of weeks 23-20 through 30-20, the Department additionally paid claimant \$600 of FPUC benefits. All told, the

Department paid claimant \$6,021 of regular UI benefits and \$4,800 of FPUC benefits for the weeks at issue. Each of these payments was made on or before September 21, 2020.¹

(5) On May 25, 2021, the Department issued decision # 81414, concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective May 31, 2020. On June 14, 2021, decision # 81414 became final without claimant having filed a request for hearing. On May 7, 2024, claimant filed a late request for hearing on decision # 81414. On March 12, 2025, ALJ Chiller issued Order No. 25-UI-285767, allowing claimant's late request for hearing and affirming decision # 81414. On May 5, 2025, EAB issued EAB Decision 2025-EAB-0197, which affirmed Order No. 25-UI-285767.²

(6) On April 19, 2022, the Department issued decision # 103455, assessing an overpayment for the weeks at issue in the amounts of \$6,021 in regular UI benefits and \$4,800 in FPUC benefits that claimant was required to repay to the Department. The decision did not allege that the overpayment was the result of willful misrepresentation or fraud. On May 9, 2022, decision # 103455 became final without claimant having filed a request for hearing. On May 17, 2024, claimant filed a late request for hearing on decision # 103455. On March 14, 2025, ALJ Chiller issued Order No. 25-UI-286031, allowing claimant's late request for hearing and affirming decision # 103455.

(7) On March 21, 2024, claimant filed a request for waiver of recovery of the regular UI and FPUC overpayment balances. Prior to claimant filing the waiver request, he had his "wages garnished for an overpayment of one week", which reduced his regular UI overpayment balance from \$6,021 to \$5,619. Order No. 25-UI-286456 Transcript at 14.

(8) On May 7, 2024, the Department issued decision # L0003986051, granting a waiver of recovery as to claimant's \$5,619 regular UI overpayment balance, and denying waiver of recovery of claimant's FPUC overpayment. Due to a "Franc[e]s system error" decision # L0003986051 "left out one of the weeks," so it stated that claimant's FPUC waiver request was denied as to \$4,200 of FPUC benefits. Order No. 25-UI-286456 Transcript at 10. Claimant timely appealed decision # L0003986051. On September 25, 2024, ALJ Chiller conducted a hearing, and on March 18, 2025, issued Order No. 25-UI-286456, modifying decision # L0003986051 to indicate that waiver of recovery of claimant's FPUC overpayment was denied as to an FPUC overpayment balance of \$4,800.

CONCLUSIONS AND REASONS: Claimant was overpaid \$6,021 in regular UI benefits and \$4,800 in FPUC benefits for the weeks at issue. However, the Department lacked authority to amend the original decisions allowing benefits for those weeks, and claimant is therefore not liable for the overpayments. Claimant's application for review of Order No. 25-UI-286456 is dismissed as moot.

¹ 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 fact will remain in the record.

² EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. 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 and FPUC Overpayments. ORS 657.176 provides, in relevant part:

* * *

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

* * *

(c) Voluntarily left work without good cause[.]

* * *

ORS 657.310(1) 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 statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Decision # 81414 disqualified claimant from receiving benefits effective May 31, 2020, because he voluntarily quit work without good cause. That decision was affirmed by Order No. 25-UI-285767, and on May 2, 2025, EAB issued EAB Decision 2025-EAB-0197, which affirmed Order No. 25-UI-285767. The record does not suggest that claimant earned sufficient qualifying wages after May 31, 2020, to end the disqualification, and therefore claimant remained disqualified during the weeks at issue. Therefore, as a matter of law, claimant was not entitled to receive regular UI benefits for the weeks at issue, and was overpaid \$6,021 in regular UI benefits.

Under the provisions of the CARES Act, 15 U.S.C. § 9023, claimant also received \$4,800 in FPUC benefits to which he was not entitled. FPUC is a federal benefits program that provided eligible individuals with \$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). *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 FPUC benefit if they were eligible to receive at least one dollar of regular UI benefits for the claimed week. UIPL 15-20 at I-5. Because claimant was not eligible for at least one dollar of regular UI benefits for the weeks at issue, he also was ineligible to receive FPUC benefits for those weeks. *See* UIPL 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."). Therefore, claimant was not entitled to receive FPUC benefits for the weeks at issue, and was overpaid \$4,800 in FPUC benefits.

However, the Department lacked authority to amend the original decisions allowing benefits for the claimed weeks to decisions denying benefits. Therefore, as discussed below, the Department lacked authority to assess the overpayments for the weeks at issue and claimant is not liable to repay them.

Authority to amend original decisions allowing benefits. 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.)

Order No. 25-UI-286031 concluded that claimant was overpaid a total of \$6,021 in regular UI benefits and \$4,800 in FPUC benefits for the weeks at issue that he was required to repay to the Department. Order No. 25-UI-286031 at 7-8. As discussed above, the record shows that claimant was overpaid those benefits. However, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue more than a year later, and claimant is therefore not liable for the overpayments.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each weekly claim on or before September 21, 2020. Pursuant to ORS

657.267(1), except in cases of willful misrepresentation or fraud, the Department has one year to amend the decisions allowing payment. Because decision # 103455 was issued on April 19, 2022, more than one year after the original decisions to allow payment for the weeks at issue, the Department was not authorized to amend the original decisions pursuant to ORS 657.267(4) in the absence of willful misrepresentation or fraud. Decision # 103455 did not allege that the overpayments were the result of willful misrepresentation, and the record supports this conclusion. Accordingly, the overpayments were not the result of willful misrepresentation or fraud, and the one-year limitation on amendments applies.

The Department therefore lacked authority to amend the original decisions allowing payment of benefits for the weeks at issue with a decision denying benefits and assessing an overpayment for those weeks, and claimant is not liable for the overpayment of \$6,021 in regular UI benefits and \$4,800 in FPUC benefits.

Application for Review of Order No. 25-UI-286456 – Overpayment Waiver Request – Dismissed.

Because Order No. 25-UI-286031 is modified and claimant is no longer liable for an overpayment of regular UI or FPUC benefits, claimant's request for waiver of recovery of that overpayment is moot. Claimant's application for review of Order No. 25-UI-286456, which affirmed denial of the FPUC portion of that waiver request, therefore presents no justiciable controversy. A ruling on the merits of the FPUC waiver denial would have no practical effect on claimant's rights or obligations. Accordingly, the application for review of Order No. 25-UI-286456 is dismissed.

DECISION: Order No. 25-UI-286031 is modified, as outlined above. The application for review of Order No. 25-UI-286456, filed March 29, 2025, is dismissed.

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

DATE of Service: May 5, 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

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