

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0501

Reversed
Waiver Granted

PROCEDURAL HISTORY: On September 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to waive recovery of an overpayment balance of \$4,363 (decision # L0006109692). Claimant filed a timely request for hearing. On July 22, 2025, ALJ Chiller conducted a hearing, and on July 30, 2025 issued Order No. 25-UI-299055, affirming decision # L0006109692. On August 13, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument 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 argument that were based on the hearing record.

PARTIAL ADOPTION: 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-299055 concluding that claimant was not at fault for the overpayment under applicable standards for federal benefits. That part of Order No. 25-UI-299055 is **adopted**. See ORS 657.275(2). The rest of this decision addresses whether claimant met the equity and good conscience requirement to grant the waiver request.

FINDINGS OF FACT: (1) On September 7, 2022, the Department issued decision # 112341, assessing an overpayment of \$2,050 in Pandemic Unemployment Assistance (PUA) and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that he was required to repay. Decision # 112341 became final without claimant having filed a request for hearing.

(2) On May 30, 2024, claimant filed a request to waive recovery of the overpayment balance, which at that time was \$4,363.

(3) On September 10, 2024, the Department issued decision # L0006109692, denying the waiver request by concluding that claimant was at fault for the overpayment.

(4) Three hundred percent of the federal poverty level for a family of four in Oregon in 2024 was \$93,600. Claimant had no wages in subject employment reported to the Department in 2023 or 2024.¹ However, claimant reported net self-employment earnings of \$4,000 per month on his waiver application. Claimant has received Supplemental Nutrition Assistance Program (SNAP) benefits since at least March 1, 2024.

CONCLUSIONS AND REASONS: Claimant's request to waive recovery of the overpayment is granted.

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 657.310(2) provides for the assessment of monetary penalties when an overpayment results from an individual having willfully made a misrepresentation to obtain benefits pursuant to ORS 657.215.

Waiver of PUA and FPUC overpayments are governed by the provisions of 15 U.S.C. § 9201(d)(4) and 15 U.S.C. § 9023(f)(2), respectively. These statutes provide that for a waiver to be granted, the overpayment of PUA or FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience.

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. Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 10 (February 7, 2022). 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. UIP 20-21 Change 1, at 10-13.

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

* * *

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

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

¹ 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.

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

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

* * *

The order under review concluded that claimant was not at fault for the overpayment under applicable federal standards, and, as previously stated, that portion of the order is adopted here. The order under review further concluded that claimant did not meet the state equity and good conscience standard set forth in the version of OAR 471-030-0053(3) (effective March 15, 2023 through June 22, 2024) in effect at the time claimant filed his waiver request, but which was no longer in effect when the Department denied the request. Order No. 25-UI-299055 at 2, 4. The record does not support the use of the older version of the rule under these circumstances.

The Department did not elect whether to use the federal or state standard in determining whether recovery of the overpayment would be against equity and good conscience. Under the federal standard, because claimant's income and expenses, based on his family size, qualified him for need-based food assistance, it can reasonably be inferred that recovery of the overpayment would cause financial hardship. Claimant therefore met that standard.

Moreover, claimant also met the standard under state law. Claimant filed his waiver request on May 30, 2024, and the Department denied it on September 10, 2024. On June 23, 2024, an amended version of OAR 471-030-0053 became effective. A decision on claimant's request had not been issued by the Department prior to this amendment, and it is appropriate to apply the amended version of the rule to review of the administrative decision, as doing so would not prejudice claimant. As explained in greater detail below, recovery of the overpayment would be against equity and good conscience under the amended version of the rule.

Under the version of OAR 471-030-0053 effective June 23, 2024, claimant met the criteria for automatic granting of a waiver if his reported wages in the last four quarters were less than or equal to \$93,600, which was 300% of the federal poverty level for a family of four in 2024. OAR 471-030-0053(3)(a)(A). The Department's records show that no employers reported having paid wages to claimant during 2023 or 2024. However, claimant reported in the waiver application having earned \$4,000 per month from self-employment. On an annualized basis, claimant's earnings were \$48,000, and were therefore less than \$93,600, meeting automatic waiver criteria.² Therefore, recovery of the overpayment would be against equity and good conscience under the state standard.

Accordingly, under both the state and federal standards, recovery of the overpayment would be against equity and good conscience. Claimant's waiver request therefore is granted.

² \$4,000 x 12 months = \$48,000.

DECISION: Order No. 25-UI-299055 is set aside, as outlined above.

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

DATE of Service: September 18, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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