

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0588

Modified
Late Request for Hearing Allowed
No Overpayment or Penalties

PROCEDURAL HISTORY: On November 2, 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 an overpayment of \$11,132 in combined regular unemployment insurance (regular UI), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, a \$1,669.80 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 194345). On November 22, 2022, decision # 194345 became final without claimant having filed a timely request for hearing. On January 23, 2026, claimant filed a late request for hearing.

ALJ Scott considered claimant's request, and, on March 19, 2026, issued Order No. 26-UI-324307, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 2, 2026. On March 25, 2026, claimant filed a timely application for review of Order No. 26-UI-324307 with Employment Appeals Board. On April 28, 2026, EAB issued EAB Decision 2026-EAB-0318, reversing Order No. 26-UI-324307 and remanding the matter to determine if claimant had good cause for filing the late request for hearing and, if so, the merits of decision # 194345.

On May 20, 2026, ALJ Enyinnaya conducted a hearing, and on May 28, 2026 issued Order No. 26-UI-331395, allowing claimant's late request for hearing on decision # 194345; and affirming that decision on the merits by concluding that claimant willfully made a misrepresentation to obtain benefits, and was therefore liable for an overpayment of \$1,510 in regular UI benefits, \$3,763 in PEUC benefits, and \$5,859 in FPUC benefits, as well as a \$1,669.80 monetary penalty and a 52-week penalty disqualification from future benefits. On June 8, 2026, claimant filed an application for review of Order No. 26-UI-331395 with 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. 26-UI-331395 allowing claimant's late request for hearing. That part of Order No. 26-UI-331395 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) On February 25, 2020, Ashland Supportive Housing & Community Outreach, Inc. (the employer) hired claimant as a direct support professional (DSP). Claimant trained with the employer for the position until March 18, 2020, at which point the employer considered him ready to accept shifts as a DSP. However, the position did not guarantee claimant any hours. Instead, claimant was to work on an as-needed basis, accepting or declining offers of shifts from the employer as they became available.

(2) The employer began offering claimant shifts after the training period ended, but claimant never accepted any. He declined to do so over concerns relating to the then-emergent COVID-19 pandemic, as claimant was concerned about his safety, particularly because he suffered from multiple conditions such as post-traumatic stress disorder (PTSD), panic disorder, tachycardia, and "abdominal issues." Transcript at 33. Claimant eventually told the employer that he would not be returning to work for them. Claimant never performed any work for the employer other than during the training period which ended on March 18, 2020, but the employer had work available for claimant had he chosen to accept it.

(3) On March 26, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant's weekly benefit amount to be \$151. On his initial claim, one part of the form offered five choices to describe his employment status with the employer: "laid off/lack of work"; "voluntary quit"; "discharge/fired"; "leave of absence"; and "suspension." Transcript at 37. Claimant chose the "laid off/lack of work" option. Claimant was aware that the employer had not laid him off, and did not intend to convey that he had been laid off. However, he felt that none of the five listed options properly described his circumstances relating to his concerns about the pandemic, and did his "best to select something out of a number of options that... didn't fit very well the situation [he] was in." Transcript at 35.

(4) Claimant subsequently claimed benefits for the weeks of April 26, 2020 through October 3, 2020 (weeks 18-20 through 40-20). These are the weeks at issue. The Department paid claimant \$11,132 in combined regular UI, PEUC, and FPUC benefits for the weeks at issue. If claimant had reported on his initial claim that he voluntarily quit working for the employer, the Department would likely have referred the issue for adjudication before paying claimant benefits for the weeks at issue.

(5) In or around early December 2020, the Department adjudicated claimant's work separation from the employer. During the adjudication fact-finding, claimant told the adjudicator "that he knew he quit" and had been "sick and had issues with COVID during that time." Transcript at 28. On December 17, 2020, the Department issued decision # 103400, concluding that claimant had voluntarily quit working for the

employer without good cause, and that claimant therefore was disqualified from receiving benefits effective March 22, 2020. Decision # 103400 also stated, “This decision replaces a prior payment determination.” Exhibit 2 at 9. As of July 17, 2026, decision # 103400 has not been reversed.¹

(6) On November 2, 2022, the Department issued decision # 194345, based in part on decision # 103400, and concluding, in relevant part, that claimant was not eligible for benefits for the weeks at issue because he had voluntarily quit working for the employer without good cause.

CONCLUSIONS AND REASONS: Claimant was overpaid benefits for the weeks at issue, but not as a result of fraud or willful misrepresentation, and claimant is not liable for a monetary penalty or a penalty disqualification. Because the overpayment was not caused by fraud or willful misrepresentation, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue because they were paid more than a year prior to the issuance of decision # 194345. Because the Department was not allowed to amend the decisions that caused the overpayment, claimant does not have to repay the overpaid benefits. ORS 657.267(4).

Overpayment and Willful Misrepresentation. A claimant who received benefits to which they were not entitled must repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the claimant under ORS chapter 657. This applies if the benefits were received because the claimant 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 claimant’s knowledge or intent. ORS 657.310(1)(a). A claimant 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. A claimant who has been disqualified from benefits for making a willful misrepresentation must also pay a penalty in an amount between 15 and 30 percent of the amount of the overpayment. ORS 657.310(2)(a).

In a case alleging that an individual should be disqualified from future benefits, the Employment Department has the burden of proof to establish that the individual willfully violated ORS 657.215. *Cook v. Employment Division*, 47 Or. App. 437 (1980). The Department must show that the individual acted with the intent to misrepresent a fact or facts for the purpose of obtaining unemployment benefits. *Pruett v. Employment Division*, 86 Or. App. 516 (1987).

Claimant was paid \$11,132 in combined benefits for the weeks at issue, but the Department later determined that he was not eligible for those benefits based on the conclusion in decision # 103400 that he had voluntarily quit work without good cause. As of the date of this decision, decision # 100400 has not been reversed, and therefore remains in effect. Therefore, as a matter of law, claimant was not, as the order under review correctly concluded, entitled to benefits for the weeks at issue, and was overpaid \$11,132 in combined benefits. Order No. 26-UI-331395 at 7.

The order under review also concluded that claimant was overpaid benefits because he made a willful misrepresentation in order to obtain benefits. Order No. 26-UI-331395 at 7. The record does not support

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 facts will remain in the record.

this conclusion. In brief, claimant reported on his initial claim that he had been laid off from the employer due to a lack of work. Claimant reported as such on his initial claim despite being aware of the fact that he had chosen to leave work while the employer had work available for him. Thus, claimant made a false statement or misrepresentation. Had claimant correctly reported that he had voluntarily quit working for the employer, the Department would likely have adjudicated the work separation before paying claimant benefits. Thus, claimant's misrepresentation may have caused the overpayment.

Despite the fact that claimant made a misrepresentation that likely led him to receiving benefits, however, the Department has not met their burden to show that claimant *willfully* made this misrepresentation *for the purpose* of receiving benefits. In fact, the only evidence in the record supporting the Department's position is the fact that claimant knew it was his choice to leave work, and that continuing work was available with the employer. It is error to infer fraudulent intent from this fact alone.

The record shows that claimant declined to return to work for the employer because he was concerned about the safety of continuing to work for the employer, in light of his medical conditions and the then-emergent COVID-19 pandemic. Under the applicable law, this was clearly considered a voluntary leaving.² However, the proper characterization of a work separation is a question of law, rather than a matter of common knowledge. Thus, it is entirely possible that a layperson in full possession of the facts relating to their separation from work could, without fraudulent intent, nevertheless incorrectly report that they had been laid off rather than voluntarily quit. The record supports the conclusion that this is what happened here.

At hearing, claimant testified that he "wouldn't have intentionally... said that [he] was laid off if [he] hadn't [been]." Transcript at 35. Claimant likewise suggested that he either misread the question on the initial claim, or otherwise believed that he was choosing correctly because "there was a little bit less work" due to "some shutdowns occurring during the time." Transcript at 35. Further, claimant testified that he felt that "there wasn't an option that fit [his] specific situation with the concerns with the pandemic," and that he did his "best to select something out of a number of options that... didn't fit very well the situation [he] was in." Transcript at 35. The record also shows that claimant admitted to the adjudicator, in or around December 2020, that he had voluntarily quit working for the employer. Conversely, it does not show that claimant's answers to the adjudicator were evasive, or that claimant made any false statements during the fact-finding process. Likewise, the record lacks evidence to show that claimant knew or believed, at any point in 2020, that reporting the work separation as a lack of work instead of a voluntary leaving could or would result in his obtaining benefits to which he otherwise may not have been entitled. It also fails to show that the five options from which claimant was to choose on the initial claim contained any explanation to help claimants choose the most accurate option.

In sum, the only evidence to support a conclusion of willful misrepresentation is the fact that claimant reported that he had been laid off due to a lack of work while being aware of the fact that he left of his own accord. By contrast, the record contains significant evidence to support the conclusion that claimant's incorrect characterization of the work separation on his initial claim was an error made in

² If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

good faith, and not with the intent to obtain benefits to which he was not entitled. As such, the Department has not met their burden to show that the overpayment resulted from willful misrepresentation, and claimant therefore is not liable for a monetary penalty or a penalty disqualification.

Authority to Amend Allowing Decisions. ORS 657.267 states:

(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.

(Bold, italic emphasis added.)

The order under review concluded that claimant was overpaid regular UI, PEUC, and FPUC benefits for the weeks at issue that claimant must repay. Order No. 26-UI-331395 at 7. Although the record shows that claimant was overpaid those benefits, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue because the benefits were, more likely than not, paid more than a year before the issuance of decision # 194345.

The record does not show when benefits for the weeks at issue were paid. However, it can be reasonably inferred that there was no significant delay in paying those benefits, relative to when they were claimed.

As those weeks ran between April 26, 2020 through October 3, 2020, the last of the weeks at issue were, more likely than not, paid sometime in October 2020. Further, even if some delay prevented them from being paid timely, decision # 103400 indicated that it “replace[d] a prior payment determination,” and disqualified claimant from benefits beginning on March 22, 2020. The record lacks evidence to show that the overpayment resulted from any other factor besides the disqualification under decision # 103400. Thus, it is reasonable to infer that, at the very latest, benefits for all of the weeks at issue had been paid on or prior to December 17, 2020, the date on which decision # 103400 was issued. Under ORS 657.267(1), the Department had one year to amend the decisions to allow benefits, except in cases of willful misrepresentation or fraud.

On November 22, 2022, the Department issued decision # 194345, concluding that claimant was not entitled to the benefits he received for the weeks at issue based on the conclusions of decision # 103400. The Department asserted that claimant’s failure to correctly report the work separation was the result of willful misrepresentation, and the order under review affirmed that conclusion. However, as discussed above, the Department did not meet their burden to show that claimant made a willful misrepresentation to obtain benefits. Claimant’s case therefore is not one of willful misrepresentation or fraud, and the Department was subject to the one-year limitation on amending its original decisions to allow payment imposed by ORS 657.267(4). Because benefits for those weeks were paid more than one year prior to the issuance of decision # 194345, the law did not permit the Department to amend the original decisions that allowed the payment of benefits and, in turn, to assess an overpayment of benefits for the weeks at issue. Claimant therefore does not have to repay the overpaid benefits for the weeks at issue.³

DECISION: Order No. 26-UI-331395 is modified, as outlined above.

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

DATE of Service: July 17, 2026

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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³ Because the Department lacked the authority to assess claimant an overpayment for the weeks at issue, any sums that claimant repaid towards the assessed overpayment, monetary penalty, or interest must be refunded to claimant. Likewise, to the extent that the penalty disqualification assessed by decision # 194345 prevented payment of benefits to claimant for subsequently-claimed weeks of benefits to which he otherwise would have been entitled, the Department must reverse any such denials and pay claimant those benefits, if the sole reason for the denial was the now reversed penalty disqualification.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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