

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0667

Reversed and Remanded

PROCEDURAL HISTORY: On May 12, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and therefore was ineligible to receive unemployment insurance benefits effective November 9, 2025 and until the reason for the denial ended; and that claimant had received benefits to which he was not entitled, and assessing an overpayment of \$9,100 that he was required to repay to the Department (decision # L0017548935). Claimant filed a timely request for hearing. On July 7, 2026, ALJ Griffith conducted a hearing, and on July 15, 2026 issued Order No. 26-UI-335058, affirming decision # L0017548935.¹ On July 24, 2026, claimant filed an application for review of Order No. 26-UI-335058 with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) On November 19, 2025, claimant filed an initial claim for unemployment insurance benefits that the Department determined was monetarily valid, with a weekly benefit amount (WBA) of \$455. Claimant filed continued claims for the weeks including November 9, 2025 through March 28, 2026 and April 5, 2026 through April 11, 2026 (weeks 46-25 through 12-26 and 14-26). These are the weeks at issue. Claimant was paid \$455 in benefits for each of the weeks at issue, totaling \$9,100.

(2) Prior to filing the initial claim and continuing through the weeks at issue, claimant worked as a loan officer under an independent contractor agreement with Barrett Financial Group. Claimant worked between 30 and 50 hours per week during each of the weeks at issue and was paid on a commission-only basis. Claimant was paid a commission of approximately \$26,000 on or around April 1, 2026, based on

¹ Although Order No. 26-UI-335058 stated that it affirmed decision # L0017548935, it did not make any conclusions regarding claimant's availability to work during the weeks over which jurisdiction was taken and instead stated that claimant "is subject to disqualification from receiving unemployment insurance benefits under ORS 657.176(2)(c) [relating to voluntarily leaving work without good cause], effective November 9, 2025, until requalified under Employment Department law." Order No. 26-UI-335058 at 5. This is presumed to be a drafting error in the order.

work performed prior to that date, and did not claim benefits for the week in which the payment occurred (week 13-26). Claimant did not receive commission payments in any of the weeks at issue.

(3) Under the terms of the independent contractor agreement, claimant solicited his own reverse mortgage clients at times and places of his choosing, using marketing materials he paid for, and owed fees to Barrett Financial Group on a monthly basis for being associated with their business. Claimant was not required to work a minimum number of hours each week.

(4) The Department determined claimant's labor market area to be Tualatin, Lake Oswego, Tigard, southwest Portland, and Wilsonville, Oregon, and that the primary occupation in which work was to be sought was loan officer/mortgage lending.² Claimant applied for full-time positions during the weeks at issue, and, had he been offered suitable work, would have immediately modified his schedule and activities associated with the independent contractor agreement to accept and report for such work.

(5) On the continued claim form for each of the weeks at issue, claimant was asked if he had worked or received pay during the week, and each time he answered in the negative. Had claimant reported that he either worked or received pay during the week, the claim filing system would have then asked claimant to report the hours worked and pay earned or received. The Department was therefore unaware during the weeks at issue that claimant had been performing self-employment work for which he might later be entitled to a commission.

(6) After declining to file a continued claim for the week of March 29, 2026 through April 4, 2026 (week 13-26), claimant was required to speak with a Department representative to restart his claim in order to file continued claims for subsequent weeks. On April 21, 2026, claimant spoke with a Department representative online, and when asked during the conversation if he had worked during the week of April 12 through 18, 2026 (week 15-26), claimant replied that he had worked 40 hours, and described the independent contractor arrangement with Barrett Financial Group. The claim was then referred to a Department investigator, who asked claimant about his commissions from the work. On May 4, 2026, claimant told the investigator about the approximately \$26,000 commission he had received during week 13-26. Had the Department been aware earlier of claimant's commission earnings that were allocatable to any of the weeks at issue, claimant likely would not have been paid benefits for those weeks.

CONCLUSIONS AND REASONS: Order No. 26-UI-335058 is set aside. Claimant was available for work during the weeks at issue. The matter is remanded for further development of the record to determine whether claimant was overpaid benefits.

Availability for Work. To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c).

For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

² The record shows that at least some of the jobs claimant applied for were not in this field of work, but the Department did not advise claimant during the weeks at issue that his work search activities were inadequate for that reason.

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area . . . every day of the week * * *.

* * *

OAR 471-030-0036(3) (March 21, 2022). Where the Department has paid benefits it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Under OAR 471-030-0036(3)(a) and (b), during each of the weeks at issue claimant must have been willing to work for an employer full time during all of the usual hours and days of the week customary for the work being sought, and capable of accepting and reporting for such work. The record shows that claimant was performing full-time or near-full-time work as an independent contractor during each of the weeks at issue, likely including during the days and hours customary for loan officer work. However, claimant asserted that because Barrett Financial Group did not set his schedule or require him to work a minimum number of hours, he would have accepted and reported for other work had it been offered and would have limited performing services as an independent contractor to the extent that doing so conflicted with the offer of new work. Exhibit 1 at 132.³ In considering claimant's limited investment in this self-employment venture and its failure to generate commission income from at least November 2025 through March 2026, this assertion is plausible. The Department has not presented sufficient evidence to meet its burden of showing that, more likely than not, claimant would have chosen to continue in the independent contractor agreement rather than accept an offer of suitable work from an employer. Accordingly, the Department has not shown that claimant failed to meet the requirements of OAR 471-030-0036(3) to be considered available for work during the weeks at issue, and he is therefore eligible to receive unemployment insurance benefits for those weeks on that basis.

Overpayment. A claimant who was overpaid benefits because the claimant, regardless of their knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, must repay the benefits or have the benefit amount deducted from future benefits otherwise payable to them. An overpayment may only be deducted from any future benefits the claimant is eligible to receive within the five years after the decision concluding there was an overpayment becomes final. ORS 657.310(1)(a).

³ Exhibit 1 is contained in two files that are 133 and 31 pages in length, with the 31-page file largely duplicated within the larger file. All citations to Exhibit 1 in this decision refer to the page number of the 133-page file.

ORS 657.100 provides:

(1) An individual is deemed “unemployed” in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount.

(2) For the purposes of ORS 657.155 (1), an individual who performs full-time services in any week for an employing unit is not unemployed even though remuneration is neither paid nor payable to the individual for the services performed; however, nothing in this subsection shall prevent an individual from meeting the definition of “unemployed” as used in this section solely by reason of the individual’s performance of volunteer services without remuneration for a charitable institution or a governmental entity.

* * *

ORS 657.020(1)(a) provides:

As used in this chapter, unless the context requires otherwise, “employing unit” means . . . [a]ny individual or type of organization, including any partnership, association, limited liability company, limited liability partnership, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, or the legal representative of a deceased person, who has or had in its employ one or more individuals performing services for it within this state.

OAR 471-030-0017 (June 23, 2021) provides:

* * *

(2) Definitions. For purposes of applying ORS 657.100 and 657.150, and as used in this rule:

(a) “Employment” means:

(A) Being in an employer-employee relationship during a period of time for which remuneration was paid or payable; or

(B) Providing a service or product for cash or cash value.

(b) “Earnings” means remuneration;

(c) Where an employer-employee relationship exists, “remuneration” means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips;

(d) Where no employer-employee relationship exists, “remuneration” means the gross amount of compensation for the product or service, less only the value of tangible components involved in producing or providing the product or service and limited to the tangible components that remain with the party receiving the service or product;

* * *

* * *

(4) Allocating Remuneration: For purposes of ORS 657.100 and 657.150(6) remuneration or an applicable prorate share thereof shall be allocated as follows:

(a) In the case of services, allocated to the week in which the service was performed;

* * *

(d) If the dates of sale or service are not clearly established, allocation shall be made upon a reasonable estimate provided by the individual. If the individual cannot or will not provide a reasonable estimate, the remuneration shall be allocated equally over the period during which services were rendered or products were sold.

Claimant was paid \$455 in unemployment insurance benefits for each of the 20 weeks at issue, totaling \$9,100. The order under review concluded that claimant was overpaid those benefits because, under ORS 657.100(2), claimant was not “unemployed” during the weeks at issue since he performed full-time services, regardless of whether remuneration was not paid or payable for the services, and he was therefore ineligible to receive benefits. Order No. 26-UI-335058 at 3-4. The record does not support the application of ORS 657.100(2) to claimant’s circumstances. However, further development of the record is needed to determine whether the remuneration claimant earned from self-employment rendered him not “unemployed” under ORS 657.100(1) during any of the weeks at issue, and therefore whether he was overpaid benefits for those weeks.

ORS 657.100(2) applies only to an individual who performs full-time services “for an employing unit.” ORS 657.020(1)(a) defines “employing unit” as an individual or organization “who has or had in its employ one or more individuals performing services for it within this state.” The Department’s guidance on applying this statute to claimants who are self-employed, such as an independent contractor, states:

The self-employed are usually sole proprietors. This affects the operation of ORS 657.100 as it applies to self-employed claimants. Since these claimants work for themselves and not for an employing unit, the hours they spend on self-employment have no effect on their being considered unemployed. The self-employed claimant is employed full-time only when their gross earnings from self-employment equal or exceed the weekly benefit amount.

Unemployment Insurance Policy Guide, 2nd Quarter 2026 Update at 74-75. The record fails to show that Barrett Financial Group was an “employing unit” that employed claimant or another individual in this

state in subject employment. Although not dispositive of the issue, the record shows that both claimant and Barrett Financial Group considered claimant to be an independent contractor.⁴ The Department's representative at hearing also testified that the Department did not consider claimant's remuneration from services performed in connection with Barrett Financial Group to be wages in subject employment, and suggested that the Department had not sought unemployment insurance contributions from that business for the commission paid to claimant. Transcript at 9. On this record, the Department has not shown that claimant performed services for an "employing unit" during the weeks at issue. Thus, under the Department's guidance, ORS 657.100(2) does not determine whether claimant was considered "unemployed" for purposes of unemployment insurance benefit eligibility.

However, that guidance does provide that if claimant's gross earnings from self-employment equaled or exceeded his weekly benefit amount during a week claimed, he is not considered "unemployed" during that week and is ineligible for benefits on that basis. This guidance is reasonably consistent with the provisions of ORS 657.100(1). It is therefore necessary to determine how the \$26,000 in remuneration claimant received during week 13-26 should be allocated to the weeks in which the services entitling claimant to that payment were performed, and the allocated amounts then compared to claimant's WBA to determine whether claimant was "unemployed" during each of the weeks at issue.

On remand, inquiry should be made to confirm whether the basis for the \$26,000 commission was the closing of one loan, rather than multiple loans; determine when claimant first contacted the borrower(s) of the loan(s) that entitled claimant to the commission, or when he first performed services of any kind on the loan(s) or to solicit that borrower's business prior to contacting them; and determine whether claimant performed services of any kind in furtherance of closing the loan(s), including monitoring its status, during each of the subsequent weeks at issue. The gross amount of commission earned by claimant should then be allocated among the weeks in which he performed any services related to those loan(s). If claimant is unable or unwilling to provide a reasonable estimate of when the services were provided, allocation may be made equally over the period during which services were rendered, in accordance with OAR 471-030-0017(4)(d). Once claimant's gross earnings are allocated, a determination should be made as to each week at issue whether the remuneration allocated to that week, if any, exceeded claimant's \$455 WBA. If claimant's allocated remuneration for any week at issue exceeded his WBA, he was ineligible to receive benefits for that week and was therefore overpaid, and further inquiry should be made into whether ORS 657.310(1)(a) governs recovery of the overpayment.⁵

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was overpaid benefits on the basis of earning

⁴ ORS 657.040(1) provides: "Services performed by an individual for remuneration are deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Director of the Employment Department that the individual is an independent contractor, as that term is defined in ORS 670.600."

⁵ On June 9, 2026, the Department issued a separate administrative decision concluding that the overpayment at issue in this appeal was caused by claimant making a willful misrepresentation or failing to report a material fact to obtain benefits, and assessing penalties (decision # L0017949361). Claimant has not filed a request for hearing on that decision. The order on remand could affect whether the Department might cancel or amend that decision.

remuneration that exceeded his WBA during the weeks at issue, Order No. 26-UI-335058 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-335058 is set aside, and the matter remanded for further proceedings as outlined above.

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

DATE of Service: September 11, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-335058 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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

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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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