

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0686

Order No. 26-UI-334757 Reversed
Request for Hearing on Decision # L0017342232 Timely – Merits Hearing Required
Order No. 26-UI-334762 Reversed & Remanded

PROCEDURAL HISTORY: On May 4, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective December 7, 2025 (decision # L0017342232).¹ On May 6, 2026, claimant filed a request for hearing on decision # L0017342232 that was not recognized as a request for hearing by the Department. On May 22, 2026, the Department served notice of an administrative decision, based in part on decision # L0017342232, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$6,480 overpayment that claimant was required to repay to the Department, a \$972 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # L0017611729). On May 26, 2026, decision # L0017342232 became final without claimant having filed a recognized request for hearing. On June 11, 2026, claimant filed a late request for hearing on decision # L0017342232 and a timely request for hearing on decision # L0017611729.

On July 9, 2026, ALJ Monroe conducted a hearing on each matter, and on July 10, 2026 issued Orders No. 26-UI-334757 and 26-UI-334762. Order No. 26-UI-334757 dismissed claimant's request for hearing on decision # L0017342232 as late without good cause and left that decision undisturbed. Order No. 26-UI-334762 modified decision # L0017611729 by concluding that claimant was overpaid \$6,480 in benefits that he was required to repay to the Department, but that he did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and was not liable for a monetary penalty or penalty disqualification. On July 30, 2026, claimant filed applications for review of Orders No. 26-UI-334757 and 26-UI-334762 with the Employment Appeals Board (EAB).

¹ Decision # L0017342232 stated that claimant was denied benefits from December 7, 2025 to December 12, 2026. However, decision # L0017342232 should have stated that claimant was disqualified from receiving benefits beginning Sunday, December 7, 2025, and until he earned four times his weekly benefit amount. See ORS 657.176.

EAB combined its review of Orders No. 26-UI-334757 and 26-UI-334762 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2026-EAB-0686 and 2026-EAB-0687).

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

FINDINGS OF FACT: (1) Big Bang Enterprises, Inc. employed claimant for several years on an intermittent basis. The work involved claimant demonstrating products at various retail locations.

(2) On December 6, 2025, while claimant was performing work at a Costco store, Costco personnel accused claimant of having consumed or concealed their merchandise without paying for it, and therefore ejected him from the store and threatened him with arrest for trespassing if he returned. Claimant immediately reported this to the employer by phone, disputing the accusation, and the employer told claimant that they would investigate the matter.

(3) On December 10, 2025, one of the employer's human resources representatives spoke with claimant by phone. The employer believed that the representative told claimant that he was being discharged based on what had occurred on December 6, 2025. However, claimant's understanding of what he was told during the call was that he would not be assigned to work at Costco locations in the future, but that he was still eligible to be offered assignments at other retail locations.

(4) On December 15, 2025, claimant filed an initial claim for unemployment insurance benefits by phone. Claimant was asked in the claim filing process if he was "still with the employer," and claimant replied to the effect of that he "[didn't] know" and it was "hard to tell." Order No. 26-UI-334762 Transcript at 45. Claimant understood that his response was recorded on the claim form as "still employed." Order No. 26-UI-334762 Transcript at 45-46. Claimant believed this statement was accurate because he thought the employer might still assign him work at locations other than Costco "when they had an emergency[.]" Order No. 26-UI-334762 Transcript at 46.

(5) The Department determined that the claim was monetarily valid with a weekly benefit amount (WBA) of \$405. Claimant thereafter claimed benefits for the weeks including December 21, 2025 through January 31, 2026 and February 8, 2026 through April 18, 2026 (week 52-25 through 04-26 and 06-26 through 15-26). These are the weeks at issue. Claimant was paid \$405 each of the weeks at issue for a total of \$6,480. Had claimant reported on his initial claim that the employer had discharged him for being suspected of theft, the Department would not have paid claimant benefits for the weeks at issue prior to investigating the work separation.

(6) Decision # L0017342232, dated May 4, 2026 but made available for claimant to view in his Frances Online account on May 1, 2026, stated, "You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **May 26, 2026.**" Order No. 26-UI-334757 Exhibit 1 at 2 (emphasis in original). Claimant read decision # L0017342232 prior to May 6, 2026. Claimant was also sent two requests to provide information concerning the work separation around this time.

(7) On May 6, 2026, claimant sent an online message to the Department with the subject "Unemployment insurance action needed." Order No. 26-UI-334757 Transcript at 45. The body of the

message stated, in part, “I first saw these notices on May 1st and I’ve been trying to collect what information I have so that I can correct what my Employer reported and dispute this action.” Order No. 26-UI-334757 Transcript at 45. The message also asked about one of the requests for information he had received. The Department replied the following day that the request for information had been sent in error. Claimant did not realize that Frances Online had a specific procedure by which to request a hearing and believed that “writing a letter and responding to the. . . notice was how you file for an appeal,” which is what he had intended by his message. Order No. 26-UI-334757 Transcript at 25. The Department did not construe this as a request for hearing.

(8) On or shortly before June 11, 2026, in response to having received decision # L0017611729, claimant conducted further research into filing hearing requests using Frances Online and learned the specific procedure for doing so. On June 11, 2026, claimant used that procedure to file requests for hearing on decisions # L0017342232 and L0017611729.

CONCLUSIONS AND REASONS: Orders No. 26-UI-334757 and 26-UI-334762 are set aside. Claimant filed a timely request for hearing on decision # L0017342232, and a hearing on the merits of that decision is required. Claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits. Claimant’s appeal of decision # L0017611729 is remanded to follow the merits hearing on decision # L0017342232, in order to determine whether claimant is liable for an overpayment of benefits.

Late Request for Hearing on Decision # L0017342232. ORS 657.269 states that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 states that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) states that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ended.

Under OAR 471-040-0005(2)(a) (July 15, 2018), an individual may request a hearing on an administrative decision related to payment of benefits by “mail, fax, e-mail, or other means as designated by [the] Employment Department[.]” A request for hearing may also be filed “[i]n person at any publicly accessible Employment Department office in Oregon.” OAR 471-040-0005(2)(b). Use of forms provided by the Department or similar offices for requesting a hearing is not required so long as the individual “expresses a present intent to appeal and it can be determined what issue or decision is being appealed.” OAR 471-040-0005(1).

The request for hearing on decision # L0017342232 was due by May 26, 2026. The request for hearing filed on June 11, 2026 was therefore late. Claimant asserted that he intended his May 6, 2026 message as a timely request for hearing. Order No. 26-UI-334757 concluded that claimant’s May 6, 2026 message did not constitute a request for hearing under OAR 471-040-0005. Order No. 26-UI-334757 at 4. The record does not support this conclusion.

Claimant’s May 6, 2026 message explained that he was writing in response to “notices” he first saw on May 1, 2026, which was the day decision # L0017342232 became available to view in claimant’s Frances Online account, and stated that he desired to “correct what my Employer reported and dispute this action.” Order No. 26-UI-334757 Transcript at 45. Although claimant had also been sent requests to

provide information around May 1, 2026, claimant posed questions about that correspondence separately in the message, and it is reasonable to infer that claimant's reference to "this action" that was based on "what my Employer reported" was regarding the denial of benefits in decision # L0017342232 rather than the requests for information or any other correspondence. Furthermore, although claimant did not use the words "appeal" or "hearing" in his message, he stated that he desired to "correct" the employer's reported version of the work separation and "dispute" the Department's action based on that report—his disqualification from receiving benefits. These statements conveyed a present intent to appeal, and sufficiently identified decision # L0017342232 as the decision being appealed. Accordingly, claimant filed a timely request for hearing on decision # L0017342232 on May 6, 2026, and is entitled to a hearing on the merits of that decision.

Misrepresentation. 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).

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).

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).

Claimant reported on his initial claim for benefits, filed December 15, 2025, that he was still working for the employer. In fact, the employer had decided on December 10, 2025 to discharge claimant and was unwilling to continue the employment relationship thereafter, thus discharging him on that date. The Department asserted that claimant's statement on the initial claim was a willful misrepresentation of material fact to obtain benefits, and that claimant would likely not have been paid benefits for the weeks at issue had he accurately reported the work separation. Claimant asserted that he had not understood that the employer had discharged him until May 1, 2026, when he read decision # L0017342232, and suggested that his employment status had been, at worst, ambiguous prior to that date. Claimant and the employer presented conflicting evidence regarding claimant's knowledge of the work separation.

Claimant testified that on December 6, 2025, when he was ejected from the Costco at which he was working, he explained the situation to his manager by phone and the manager replied, in part, "[D]arn. . . you know that means you can't work for Costco anymore," and claimant replied, "I know. . . which would really suck because that's where most of our hours came from." Order No. 26-UI-334762 Transcript at 31. Claimant testified that a human resources representative called him on December 10, 2025 to again discuss the incident, during which claimant refuted Costco's theft allegation and the representative replied that she "was going to check into some of the things that Costco said." Order No. 26-UI-334762 Transcript at 34. Claimant was asked at hearing if the representative told him during the call that his "employment would be terminated," and claimant replied, "Um, no. She didn't tell me that

I'd be terminated from the company like fired." Order No. 26-UI-334762 Transcript at 34. Claimant explained that based on the intermittent nature of the work assignments, which were primarily at Costco locations but occasionally at other retailers, "[W]hen they had not gotten back to me about the investigation I assumed I probably wouldn't be getting any more Costco jobs. But. . . there [were] other jobs to be had. So. . . as far as I knew, yeah, when they had an emergency they would call me. Just not for Costco." Order No. 26-UI-334762 Transcript at 46.

Claimant's manager testified that she spoke separately with claimant and Costco management by phone on December 6, 2025, and that she ended the conversation with claimant by reiterating to him that he should leave Costco's property and not return. Order No. 26-UI-334762 Transcript at 23. The witness did not specifically contradict claimant's account of that call. The witness also testified that according to the employer's records, a human resources representative told claimant during the December 10, 2025 call that his employment had been terminated, though the witness was not a party to that call. Order No. 26-UI-334762 Transcript at 18-19.

In weighing this conflicting evidence, claimant's first-hand account of the December 10, 2025 call is entitled to greater weight than the hearsay account of the human resources representative, and the facts have been found accordingly. Claimant therefore reasonably believed, as of that date, that while the employer would no longer offer him assignments at Costco, they still might offer him other assignments, and for that reason he believed that the employment relationship likely had not ended. The record therefore fails to show that when claimant represented on his initial claim that he was still working for the employer, he knew this representation to be false and nevertheless made it with the intent to obtain benefits to which he would otherwise not be entitled. Accordingly, claimant did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and is not liable for a monetary penalty or penalty disqualification.

As claimant is entitled to a hearing on the merits of the work separation, and the issue of whether claimant was overpaid as a result of being disqualified from benefits based on that work separation is contingent on the outcome of that appeal, claimant's appeal of decision # L0017611729 is remanded to accompany the work separation appeal, and for an order to be issued that factors in the outcome of that appeal.

For these reasons, Orders No. 26-UI-334757 and 26-UI-334762 are set aside, and the matters remanded for a hearing on the merits of decision # L0017342232, and further consideration of whether claimant was overpaid benefits as alleged in decision # L0017611729.

DECISION: Orders No. 26-UI-334757 and 26-UI-334762 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: September 17, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 26-UI-334757 and 26-UI-334762 or return these matters to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return that 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

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

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

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