

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0710

Modified
Request for Hearing Timely Filed
State and Federal Overpayment Waivers Granted

PROCEDURAL HISTORY: On September 16, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision granting claimant's request for a waiver of \$8,995 in overpaid state unemployment insurance benefits, but denied the request for a waiver of \$15,648.97 in federal benefits (decision # L0012887535). On October 6, 2025, decision # L0012887535 became final without the Department having processed a request for hearing from claimant.

On October 24, 2025, claimant filed a late request for hearing on decision # L0012887535. ALJ Scott considered claimant's request, and on April 30, 2026 issued Order No. 26-UI-328985, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 14, 2026. On May 14, 2026, claimant filed a timely response to the appellant questionnaire. On June 24, 2026, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 26-UI-328985 was vacated and that a hearing would be scheduled on whether to allow claimant's request for hearing and, if so, the merits of decision # L0012887535. On July 22, 2026, ALJ S. Lee conducted a hearing, and on July 30, 2026 issued Order No. 26-UI-336342, allowing claimant's request for hearing as timely, and affirming decision # L0012887535 on the merits. On August 8, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the parts of Order No. 26-UI-336342 allowing claimant's request for hearing and concluding that claimant's request for a waiver of overpaid state benefits should be allowed. Those parts of Order No. 26-UI-336342 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) On March 18, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed and was paid benefits for a period of weeks in 2020 and 2021 (the period at issue). The payments included both regular unemployment insurance (regular UI) benefits (state benefits), and a combination of COVID-19 pandemic-era federal benefits.

(2) Prior to filing her initial claim, claimant had been working for two employers: Otis Construction, Inc. and a restaurant. Claimant lost her restaurant job at the onset of the pandemic, but continued to work for Otis Construction through the period at issue.

(3) Due to several factors, claimant failed to accurately report her earnings from Otis Construction while claiming benefits for the period at issue. Claimant misunderstood the instructions for claiming benefits and erroneously believed that she was supposed to report the hours and earnings that she expected for the week during which she was claiming instead of the hours worked and earnings accrued for the previous week. Claimant had also been advised by a Department representative to “guesstimat[e]” her hours and earnings if she did not know exactly what they would be. Transcript at 19. Additionally, claimant failed to report much of her earnings from Otis Construction during the period at issue because her “understanding [was] that [she] was filing an unemployment claim for the job that [she] lost, not the job that [she] still had.” Transcript at 21. Claimant sought clarity from the Department on how to properly report her earnings because she was “confused,” but “couldn’t get anybody on the phone to help [her] or explain to [her] how that works” despite having attempted to contact them “many, many times” for an explanation. Transcript at 21, 17–18. Claimant never corrected her “guesstimated” earnings with the Department because she did not know she was supposed to do so, and did not learn of her mistake until “well after” she had stopped claiming benefits. Transcript at 20.

(4) On July 23, 2021, after having received a report of claimant’s earnings from Otis Construction, the Department issued an administrative decision concluding that claimant had made a willfully misreported her earnings for the period at issue, had therefore been overpaid both state and federal benefits that she was required to repay, and was also liable for penalties due to the willful misrepresentation. After a hearing on that decision, an order was issued which modified that decision by concluding that while claimant was liable for the overpayment assessed by the administrative decision, the overpayment was not the result of misrepresentation, and claimant therefore was not liable for any penalties. The hearing order on the overpayment decision subsequently became final, as claimant did not appeal it to EAB.

(5) On January 28, 2025, claimant filed a waiver request on the outstanding balances of her overpaid state and federal benefits. The Department waived the \$8,995 outstanding balance of claimant’s overpaid state benefits, but denied claimant’s request to waive the \$15,648.97 outstanding balance of overpaid federal benefits. The monthly payment that the Department had assessed claimant for the outstanding balance of overpaid federal benefits “is more than [claimant’s] rent, and claimant “wouldn’t have enough money to live” if she were required to repay the balance. Transcript at 22.

(6) Claimant had a total of \$58,759.91 in reported wages for 2024.¹ The 2024 Federal Poverty Level (FPL) for a family of four was \$31,200.²

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

² EAB has taken notice of this fact, which is a generally knowable fact. 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.

CONCLUSIONS AND REASONS: Claimant is entitled to a waiver of her outstanding balance of overpaid federal benefits.

Waiver of Federal Pandemic Unemployment Compensation (FPUC) overpayments are governed by the provisions of Section 2104(f)(2)(A)-(B) of the CARES Act, 15 U.S.C. § 9023(f), which requires, for waiver to be granted, that the overpayment of FPUC benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. Federal guidance provides that, in general, “an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility.” Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022).³ However, “a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state; the individual was unable to reach the state despite their best efforts to inquire or clarify what information the individual needed to provide; or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]” UIPL 20-21 Change 1, at 10.

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. UIPL 20-21 Change 1, at 10. The federal standard provides that recovery is “contrary to equity and good conscience” when at least one of 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. UIPL 20-21 Change 1, at 10-13. The guidance elaborates that recovery would cause financial hardship where “review of the individual’s income to debts (including copies of pay records and bills) reflects the hardship caused by having to repay an overpayment because the individual needs much of their current income and liquid assets (including the CARES Act benefits received) to meet ordinary and necessary living expenses and liabilities.” UIPL 20-21 Change 1, at 11.

The order under review concluded that claimant was not entitled to a waiver of her outstanding balance of \$15,648.97 in overpaid federal benefits because claimant was “at least, partially at fault for the misreported earnings” as she “never corrected her earnings amount[s] after being paid” benefits. Order No. 26-UI-336342 at 7. The record does not support this conclusion.

Claimant is entitled to a waiver of the \$15,648.97 outstanding balance of overpaid federal benefits because the record shows that the overpayment of those benefits were without fault on claimant’s part, and that repayment would be contrary to equity and good conscience. Under UIPL 20-21 Change 1, an overpayment of federal benefits may be without fault on the part of an individual if the individual gave incorrect information because of confusing information or instructions from the state or an inability to reach the state despite the individual’s best efforts to clarify what information the individual needed to

³ Substantially the same standard applies to the waiver of overpayments of other pandemic-era benefits. *See, e.g.*, 15 U.S.C. § 9025(e)(2) (regarding Pandemic Emergency Unemployment Compensation benefits); Section 262(b) of the Continued Assistance for Unemployed Workers Act of 2020 (regarding Lost Wages Assistance benefits).

provide. Here, claimant gave incorrect information regarding her earnings during the period at issue because she was confused about what to report in that regard, had at one point received confusing or misleading information from the Department regarding what to report (i.e., that she should “guesstimate” her earnings), was unable to obtain further clarification from the Department on this point despite multiple attempts to reach them, had not been told that she should later correct her “guesstimated” reported earnings, and was not otherwise aware of the fact that she should have done so. As such, claimant is considered “without fault” in this context.

The record likewise shows that repayment of the overpaid federal benefits would be contrary to equity and good conscience. Although under UIPL 20-21 Change 1, the Department had the option to use either the state standard or the federal standard in defining what it means for repayment to be contrary to equity and good conscience, the record is silent as to which approach the Department selected. In the absence of evidence to the contrary, it is reasonable to conclude that the Department opted to apply the federal standard given that the benefits at issue are from federal programs. Applying the federal standard, the record shows that repayment would be contrary to equity and good conscience because recovery would cause financial hardship to claimant. Claimant testified at hearing that the monthly payment that the Department had assessed claimant for the outstanding balance of overpaid federal benefits “is more than [claimant’s] rent, and claimant “wouldn’t have enough money to live” if she were required to repay the balance. Because repayment would cause financial hardship to claimant, requiring repayment would, under the federal standard, be against equity and good conscience.

Similarly, even if the state standard for against equity and good conscience were to be applied, claimant would meet that standard. Here, claimant’s overpayment was ultimately determined to be non-fraud but claimant-caused.⁴ Under OAR 471-030-0053(3) (June 23, 2024), claimant fault, non-fraud overpayments will be waived as against equity and good conscience if the individual “[h]as reported wages in the last four quarters that are less than or equal to 200% of the federal poverty level for a family of four[.]” OAR 471-030-0053(3)(b)(B). Claimant filed her waiver request in January 2025, and the four quarters preceding the request are therefore the first through fourth calendar quarters of 2024. For all of 2024, claimant’s total reported wages were \$58,759.91. The 2024 FPL for a family of four was \$31,200; two times that amount is \$62,400. As the latter figure is greater than claimant’s reported wages for the calendar quarters to be considered, the record shows that recovery of claimant’s overpayment would be contrary to equity and good conscience even under the state “against equity and good conscience” standard.⁵

For the above reasons, the Department is required to waive claimant’s outstanding balance of overpaid federal benefits.

DECISION: Order No. 26-UI-336342 is modified, as outlined above.

D. Hettle and A. Steger-Bentz;

⁴ See Department’s testimony, Transcript at 15 (“So initially, it was a misrepresentation, and then there was a hearing for that, and it was determined that it went from fraud to claimant caused.”)

⁵ Additionally, as the Department waived claimant’s outstanding balance of overpaid *state* benefits, it is reasonable to infer that the Department had determined that requiring repayment of the overpaid state benefits was against equity and good conscience. OAR 471-030-0053 (June 23, 2024).

S. Serres, not participating.

DATE of Service: September 25, 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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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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