

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0720

Reversed & Remanded

PROCEDURAL HISTORY: On February 9, 2024, 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 \$12,443 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 \$1,866.45 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 193534). On February 29, 2024, decision # 193534 became final without claimant having filed a request for hearing.

On February 23, 2026, claimant filed a late request for hearing. ALJ Scott considered the request, and on March 26, 2026 issued Order No. 26-UI-325130, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 9, 2026. On April 7, 2026, claimant filed a timely appellant questionnaire response. On July 22, 2026, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on July 23, 2026 issued Order No. 26-UI-335689, allowing claimant's late request for hearing and modifying decision # 193534 by concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and was not liable for a monetary penalty or penalty disqualification, but that he must repay an overpayment of \$12,443 in combined benefits. On August 10, 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-335689 allowing claimant's late request for hearing and concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits. Those parts of Order No. 26-UI-335689 are **adopted**. See ORS 657.275(2). The rest of this decision addresses the overpayment of benefits.

FINDINGS OF FACT: (1) In April 2020, claimant filed an initial claim for benefits that the Department determined was monetarily valid. Claimant claimed benefits for the weeks from April 12

through September 19, 2020 (weeks 16-20 through 38-20) and was paid a total of \$12,443 in regular UI, PEUC, and FPUC benefits for those weeks. These are the weeks at issue. The benefits were paid on or before February 8, 2023.

(2) On November 19, 2020, the Department issued decision # 125955, concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective February 2, 2020. Claimant filed a late request for hearing on that decision. In EAB Decision 2026-EAB-0721, EAB allowed claimant's late request for hearing and remanded that matter for a hearing on the merits of the work separation.

(3) On February 9, 2024, the Department issued decision # 193534, concluding that claimant was ineligible for benefits for weeks 16-20 through 38-20 based on the work separation disqualification in decision # 125955, and was therefore overpaid those benefits. Decision # 193534 also concluded that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessed a monetary penalty and penalty disqualification.

CONCLUSIONS AND REASONS: Order No. 26-UI-335689 is set aside, and the matter remanded for further proceedings.

Overpayment. 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).

Order No. 26-UI-335689 concluded that based on claimant's disqualification from benefits for the weeks at issue in decision # 125955, he was overpaid \$12,443 in benefits that he must repay. Order No. 26-UI-335689 at 9. However, as of the date of this decision, claimant is awaiting a hearing on the merits of decision # 125955. A reversal or modification of that decision on appeal would affect whether claimant was eligible for benefits for the weeks at issue, and thus, whether he was overpaid. It is therefore appropriate to remand this matter so that the overpayment issue can be decided in accordance with the outcome of the merits hearing on decision # 125955. However, if the work separation disqualification in decision # 125955 is affirmed as to some or all of the weeks at issue, claimant may nevertheless not be liable to repay the resulting overpayment, as discussed in greater detail below.

Potential Application of ORS 657.267. 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 Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue at the time it paid each of the continued claims. The record does not contain the dates on which benefits were paid to claimant for the weeks at issue, but in the absence of any indication in the record that the Department had a basis other than decision # 125955 on which to deny claimant benefits for those weeks, it stands to reason that benefits were paid within a few days of each continued claim being filed, all in 2020. Therefore, more likely than not, the original decisions to pay benefits for each of the weeks at issue were made prior to February 8, 2023. The Department therefore amended those decisions more than one year after they were made by issuing decision # 193534 on February 9, 2024.

Pursuant to ORS 657.267(4), except in "cases of alleged willful misrepresentation or fraud," the Department had one year to amend the original decisions allowing benefits. Therefore, the Department's authority to make that amendment and, in turn, claimant's liability to repay the resulting overpayment, is dependent on whether the "willful misrepresentation or fraud" exception to the one-year limitation applies. Though the Department alleged willful misrepresentation caused the overpayment, if reversed on appeal, the *allegation* ceases to exist, and the exception to the one-year limitation no longer applies. In such situations, the Department lacks authority to assess an overpayment, despite the overpayment having been assessed with an allegation of willful misrepresentation. Accordingly, even if the record on remand shows that an overpayment exists following the merits hearing on decision # 125955, claimant would not be liable for repayment because Order No. 26-UI-335689 reversed the finding of willful misrepresentation and EAB has adopted that part of the order in this decision. However, in light of claimant's pending appeal regarding the work separation, remand of this matter is still necessary to decide the threshold issue of whether claimant received benefits to which he is not entitled.

For these reasons, Order No. 26-UI-335689 is set aside and the matter remanded for further proceedings reflecting the outcome of claimant's appeal of decision # 125955.

DECISION: Order No. 26-UI-335689 is set aside, and this matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;
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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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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