EO: Intrastate
BYE: 31-Dec-9999

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

574
MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0844

Orders No. 26-UI-338637 and 26-UI-338636 Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On June 15, 2026, 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 unemployment insurance benefits, and assessing an $824 overpayment that claimant was required to repay to the Department, a $123.60 monetary penalty, and a four-week penalty disqualification from future benefits (decision # L0018439304). Also on June 15, 2026, 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 a $4,060 overpayment that claimant was required to repay to the Department, a $609 monetary penalty, and a 20-week penalty disqualification from future benefits (decision # L0018171098). Claimant filed a timely request for hearing on each decision. On July 10 and August 19, 2026, ALJ S. Lee conducted a hearing at which employer Development Northwest, Inc. did not appear, and on August 28, 2026 issued Orders No. 26-UI-338637 and 26-UI-338636, affirming decisions # L0018439304 and L0018171098. On September 8, 2026, claimant filed applications for review of Orders No. 26-UI-338637 and 26-UI-338636 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 26-UI-338637 and 26-UI-338636 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2026-EAB-0844 and 2026-EAB-0845).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because he did not state that he provided a copy of his argument to the employers as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On March 5, 2025, claimant filed an initial claim for unemployment insurance benefits that the Department determined was monetarily valid with a weekly benefit amount (WBA) of $406. On September 29, 2025, claimant restarted this claim by filing an additional claim.[1] Claimant claimed benefits for the weeks of September 28, 2025 through December 6, 2025 (weeks 40-25 through 49-25), and was paid $406 in benefits for each week, totaling $4,060.

(2) On March 8, 2026, claimant filed an initial claim for benefits following the expiration of his previous benefit year. The Department determined that the claim was monetarily valid with a WBA of $206. Claimant claimed benefits for the weeks of March 15, 2026 through April 11, 2026 (weeks 11-26 through 14-26) and was paid $206 in benefits for each week, totaling $824.

(3) From June 30 through September 29, 2025, claimant worked for Wolcott Plumbing ("the employer"). On September 29, 2025, the employer met with claimant to tell him that he would be sent home from work early for the day due to lack of work, and that he could expect this to occur on other occasions in the future due to business conditions. Claimant reacted poorly to this news, and based on that reaction, the employer decided to discharge him rather than merely reduce his hours. After claimant left the worksite, the employer contacted police regarding the incident and requested that claimant be issued a trespass warning. Later that day, the employer mailed a copy of the police report to claimant.

(4) On both the September 29, 2025 reopened claim and the March 8, 2026 initial claim, claimant was asked about the nature of the work separation and selected from among the options presented that he had been laid off due to lack of work. At the time claimant filed each of those claims, and thereafter, he believed that lack of work, and in particular, reassigning some of his work to be completed through the use of artificial intelligence, was the primary reason for the employer's decision to end the employment relationship, rather than his conduct during the September 29, 2025 meeting. The employer did not respond to the notice that a claim had been filed regarding the September 29, 2025 additional claim. The Department therefore initially adjudicated the separation as a layoff, and paid the subsequent weekly claims without further investigation.

(5) After claimant filed the March 8, 2026 initial claim, the employer responded to the notice of claim filed, asserting that claimant had been discharged for misconduct. On April 30, 2026, the Department issued an administrative decision concluding that the employer had discharged claimant for misconduct, and that claimant was therefore disqualified from receiving benefits effective September 28, 2025. Claimant appealed the decision; it was affirmed by the Office of Administrative Hearings (OAH); OAH's order was affirmed by EAB in EAB Decision 2026-EAB-0575; claimant's request for reconsideration of EAB Decision 2026-EAB-0575 was dismissed by EAB Decision 2026-EAB-0575-R; and EAB Decision 2026-EAB-0575-R became final without claimant having filed a Petition for Judicial Review with the Oregon Court of Appeals.[2]

[1] An "additional claim" is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment. OAR 471-030-0040(1)(c) (January 11, 2018)

[2] EAB has taken notice of these facts which are 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,

CONCLUSIONS AND REASONS: Claimant was overpaid a total of $4,884 in benefits that he is required to repay to the Department, but did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and is not liable for a monetary penalty or penalty disqualification.

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).

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).

Claimant was paid a total of $4,884 in benefits for the weeks of September 28 through December 6, 2025 (weeks 40-25 through 49-25) and March 15 through April 11, 2026 (weeks 11-26 through 14-26). The Department issued an administrative decision concluding that claimant was disqualified from receiving benefits, effective September 28, 2025, based on the work separation from Wolcott Plumbing, and that decision has not been disturbed on appeal. The record does not suggest that claimant requalified for benefits through subsequent earnings between September 28, 2025 and April 11, 2026. Therefore, as a matter of law, claimant remained disqualified from receiving benefits during weeks 40-25 through 49-25 and 11-26 through 14-26, and was not entitled to the benefits he received for those weeks. Claimant was paid these benefits because he reported that the work separation was a layoff, though through his unsuccessful appeal of the work separation disqualification it was ultimately determined as a matter of law to be a discharge for misconduct. Accordingly, claimant was overpaid a total of $4,884 in benefits that he is required to repay to the Department under ORS 657.310(1)(a).

The orders under review concluded that claimant willfully misrepresented the nature of the work separation on his September 29, 2025 and March 8, 2026 claims in order to obtain benefits to which he was not entitled, and was therefore liable for a monetary penalty and penalty disqualification. Order No. 26-UI-338637 at 6; Order No. 26-UI-338636 at 6. The record does not support this conclusion.

The employer's witness testified that the September 29, 2025 meeting between claimant and the employer began with the employer stating that due to a lack of work, claimant was being sent home early that day and that he should not expect a full-time work schedule going forward, and claimant replied that he wanted to be laid off entirely "so that he could collect unemployment." Transcript at 50. Claimant testified that in response to being told his hours were being reduced he "made a disparaging comment" toward his supervisor and said, "[I]f you keep cutting my hours then I'll start looking for

---

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.

other work," and that the supervisor replied, "[W]ell, then we're just going to lay you off outright then if that's your attitude." Transcript at 26, 51. The employer's witness testified that prior to claimant leaving, he was presented with termination paperwork that was created in response to his conduct toward his supervisor, but that he left without signing or accepting a copy of it and was later mailed notice of the trespass warning. Transcript at 50. Claimant did not rebut that testimony. Claimant testified that his overall understanding of this interaction was that he had been told he was "being completely terminated" and "replaced by [artificial intelligence]," and that this was the reason he considered the work separation to be a layoff. Transcript at 27.

According to claimant's account, he was told that his "attitude," rather than a lack of work, was the reason the employer decided to end his employment rather than merely reduce his hours as originally planned. This supports the conclusion, already determined as a matter of law in claimant's work separation appeal, that claimant was discharged rather than laid off. However, in the context described by the parties, it is plausible that claimant may nevertheless have believed that lack of work was a factor in the employer's decision to end his employment, and claimant has maintained since the work separation that he sincerely believed it was the primary factor in that decision. As such, claimant's representation to the Department that he had been laid off rather than discharged reflected his plausible view of what he believed had primarily motivated the employer to end the employment relationship. That the Department ultimately had a different view of what motivated the employer to end claimant's employment does not mean that claimant's expression of his view, when asked to make what is essentially a legal conclusion regarding the nature of the work separation, was a willful misrepresentation of a material fact. Accordingly, the record fails to show that claimant willfully made a misrepresentation or failed to report a material fact to obtain benefits, and he is therefore not liable for a monetary penalty or penalty disqualification.

For these reasons, claimant was overpaid $4,884 in benefits that he is required to repay to the Department under ORS 657.310(a)(1). Claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and is not liable for a monetary penalty or penalty disqualification.

DECISION: Orders No. 26-UI-338637 and 26-UI-338636 are modified, as outlined above.

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

DATE of Service: <u>October 22, 2026</u>

NOTE: If paying back your overpayment would be a financial hardship, you may request an overpayment waiver. The Department may forgive the debt and stop collection efforts if you meet certain requirements. If you apply for a waiver but do not qualify for the waiver, other relief may be available. Other relief may include a temporary pause in collection efforts or a limit on how much your current benefits may be reduced due to the overpayment. It is important to apply for a waiver as soon as possible because waivers are not retroactive. This means that if the Department grants the waiver, you will not receive a refund of payments you have already made on the overpayment.

The Overpayment Waiver Application is available for download at https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf

For more information on requesting a waiver go to https://unemployment.oregon.gov/overpayments.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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 دستورالعمل 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
Email: *appealsboard@employ.oregon.gov*
Website: *www.Oregon.gov/employ/pages/employment-appeals-board.aspx*

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.