EO: Intrastate
BYE: 31-Dec-9999

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

513
MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0853

Modified
Reduced Overpayment and Penalties

PROCEDURAL HISTORY: On July 30, 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 benefits, and assessing a $4,481 overpayment that claimant was required to repay to the Department, a $1,344.30 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # L0019133000). Claimant filed a timely request for hearing. On August 21, 2026, ALJ Janzen conducted a hearing at which the employer failed to appear, and on August 25, 2026 issued Order No. 26-UI-338138, modifying decision # L0019133000 by concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and was therefore liable for an overpayment of $3,935 that claimant was required to repay to the Department, a $1,180.50 monetary penalty, and a 52-week penalty disqualification from future benefits. On September 10, 2026, the Department filed a timely application for review with the Employment Appeals Board (EAB). On September 18, 2026, claimant filed a late application for review with EAB.

WRITTEN ARGUMENT: EAB considered the Department's written argument when reaching this decision. Claimant included a written statement enclosed with her late application for review. To the extent that claimant intended this as a written argument, EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On February 22, 2013, the Department issued an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits by failing to correctly report her earnings during a period of weeks for which she had claimed benefits in 2011 and 2012, and assessing an overpayment and penalties on that basis, including a 19-

week penalty disqualification from future benefits (decision # 193939). Decision # 193939 has since become final.

(2) On November 17, 2021, the Department issued an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits by failing to correctly report her earnings during a period of weeks for which she had claimed benefits in 2021, and assessing an overpayment and penalties on that basis, including a 14-week penalty disqualification from future benefits (decision # 200407). Decision # 200407 has since become final.

(3) On September 24, 2024, claimant filed an initial claim for benefits. The Department established claimant's weekly benefit amount (WBA) at $748. Claimant subsequently claimed benefits for the weeks of November 17, 2024 through January 4, 2025 (weeks 47-24 through 01-25). These are the weeks at issue.

(4) For the week of November 17 through 23, 2024 (week 47-24), claimant reported on her weekly claim that she had worked 8 hours and had earned $256 in wages. The Department assigned claimant waiting week credit for week 47-24, and therefore did not pay claimant benefits for that week.

(5) For the week of November 24 through 30, 2024 (week 48-24), claimant reported no hours or earnings on her weekly claim. The Department paid claimant $748 in benefits for that week.

(6) For the week of December 1 through 7, 2024 (week 49-24), claimant reported on her weekly claim that she had worked 8 hours and had earned $256 in wages. Based on her reported wages, the Department paid claimant reduced benefits of $741 for that week.[1]

(7) For the week of December 8 through 14, 2024 (week 50-24), claimant reported no hours or earnings on her weekly claim. The Department paid claimant $748 in benefits for that week.

(8) For the week of December 15 through 21, 2024 (week 51-24), claimant reported no hours or earnings on her weekly claim. The Department paid claimant $748 in benefits for that week.

(9) For the week of December 22 through 28, 2024 (week 52-24), claimant reported no hours or earnings on her weekly claim. The Department paid claimant $748 in benefits for that week.

(10) For the week of December 29, 2024 through January 4, 2025 (week 01-25), claimant reported no hours or earnings on her weekly claim. The Department paid claimant $748 in benefits for that week.

(11) In late December 2024, the Department received from the employer a response to an earnings audit that the Department had sent them regarding claimant's claim. The response indicated that claimant had earned gross wages of $695.52 from November 7 through 15, 2024, $2,028.53 from November 16 through 30, 2024, and $1,373.44 from December 1 through 7, 2024. A Department investigator later spoke to the employer and obtained earnings information for the period of December 8, 2024 through

[1] EAB has taken notice of these facts, which are contained in Employment Department records. 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 facts will remain in the record.

January 4, 2025. Claimant did not respond to the Department's request for information regarding her earnings during the weeks at issue.

(12) Based on the information received from the employer, the Department determined that claimant's actual earnings for the weeks at issue were as follows:

Week 47-24	$936.24
Week 48-24	$936.24
Week 49-24	$1,320.19
Week 50-24	$1,320.19
Week 51-24	$1,076.95
Week 52-24	$1,036.40
Week 01-25	$444.17

(13) As a result of the above findings, the Department determined that claimant had failed to correctly report her earnings during the weeks at issue, that claimant was not eligible for benefits or waiting week credit for weeks 47-24 through 52-24, and that claimant was not eligible for benefits for week 01-25, as that week was now assigned waiting week credit.

CONCLUSIONS AND REASONS: Claimant made a misrepresentation of material fact to obtain benefits to which she was not entitled, and was therefore overpaid benefits for the weeks at issue. Claimant is therefore liable for an overpayment she is required to repay to the Department, a monetary penalty, and a penalty disqualification from future benefits. Order No. 26-UI-338138 is modified to correct the allocation of claimant's earnings, which affects the assignment of waiting week credit, the amount of the overpayment, and the amount of the monetary penalty.

Remuneration. ORS 657.100(1) states, "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."

ORS 657.150(6) states:

An eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced, but not below zero, by the amount of earnings paid or payable that exceeds the greater of:

(a) Ten times the minimum hourly wage established by the laws of this state; or

(b) One-third of the individual's weekly benefit amount.

ORS 657.155(1) states, in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the Director of the Employment Department finds that:

* * *

(d) The individual has been unemployed for a waiting period of one week, unless the Governor has waived the required waiting period as provided in ORS 401.186.

* * *

OAR 471-030-0017 (December 14, 2022) states, in relevant part:

* * *

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

* * *

(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[.]

* * *

* * *

(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.

* * *

The Department initially assigned claimant waiting week credit for week 47-24, and paid her benefits for the remaining weeks at issue, totaling $4,481. It did so based on claimant's having certified for each of those weeks that she had either no earnings or earnings less than her WBA. The Department later received information from the employer indicating that claimant had significantly greater earnings for each of the weeks at issue. On this basis, the Department determined that claimant had failed to correctly report her earnings during the weeks at issue, that claimant was not eligible for benefits or waiting week

credit for weeks 47-24 through 52-24, and that claimant could not be paid benefits for week 01-25, as that week was now assigned waiting week credit. The order under review modified this determination, concluding that claimant was ineligible for benefits for weeks 47-24 through 52-24, and eligible for $553 in benefits for week 01-25. The record, however, shows that this conclusion, as well as the Department's eligibility determination, was based on an incorrect allocation of claimant's remuneration for some of the weeks at issue.

The employer reported that claimant had earned gross wages of $695.52 from November 7 through 15, 2024, $2,028.53 from November 16 through 30, 2024, and $1,373.44 from December 1 through 7, 2024. Claimant did not rebut these assertions at hearing. As such, they are taken as accurate. However, the period of November 7 through 15, 2024 encompasses the Thursday of week 45-24 through the Friday of week 46-24, and the period of November 16 through 30 encompasses the Saturday of week 46-24 through the Sunday of week 48-24.[2] As such, the employer's reported earnings for November 2024 do not directly correspond to individual benefit weeks, and it is therefore not possible to discern precisely how much claimant earned for each of weeks 45-24 through 48-24. Additionally, claimant was not able to provide an estimate of how much remuneration she earned during those weeks. As such, OAR 471-030-0017(4)(d) dictates that the remuneration must be "allocated equally over the period during which services were rendered."

The sum of all of the remuneration reported for claimant for weeks 45-24 through 48-24 is $2,724.05, which, when allocated equally among those weeks, is $681.01 per week. Thus, that figure is the correct amount of remuneration that claimant received for each of those weeks. Because $681.01 is less than claimant's WBA of $748, claimant was considered unemployed for both weeks 47-24 and 48-24. As such, claimant was eligible for waiting week credit for week 47-24, as the Department had originally determined, and that credit should be re-applied to claimant's claim. Regarding week 48-24, 1/3 of claimant's WBA is $249, when rounded to the nearest dollar, and claimant's remuneration for week 48-24 exceeded 1/3 of her WBA by $432, when rounded to the nearest dollar. Therefore, under ORS 657.150(6), the correct amount of benefits that claimant was eligible to receive for week 48-24 was $316, and claimant was overpaid $432 in benefits for that week.

A re-allocation of claimant's remuneration for the remaining weeks at issue is not necessary. As to the period of December 1 through 7, 2024, that period corresponds directly to week 49-24. It is therefore not necessary to allocate remuneration between week 49-24 and any other week, and the employer's report of $1,373.44 in remuneration can be used for that week. Regarding weeks 50-24 through 01-25, the record shows that the Department determined claimant to have earned a different sum for each of those weeks based on phone calls their investigator had with the employer. *See* Exhibit 1 at 14; Transcript at 8. As the reported wages for each of those last four weeks were unique, it can be inferred that the Department obtained specific figures for each week, rather than allocating wages reported for longer periods of time. Claimant did not dispute the employer's reported figures. Therefore, the Department's findings of claimant's remuneration for each of weeks 50-24 through 01-25 can be taken as accurate.

Finally, because week 47-24 should be re-assigned as claimant's waiting week, claimant remained eligible for a reduced benefit amount of $553 for week 01-25, based on the employer's reported remuneration of $444.17 for that week.

[2] Weeks 45-24 and 46-24 are not at issue in this matter.

In sum, claimant was eligible for waiting week credit for week 47-24, $316 in benefits for week 48-24, and $553 in benefits for week 01-25, for a total of $869. Claimant was not eligible for benefits for any of the other weeks at issue because she earned more than her WBA, and therefore was not unemployed for those weeks.

Overpayment and Willful Misrepresentation. 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).

The length of the penalty disqualification period and monetary penalty are determined by applying OAR 471-030-0052 (January 11, 2018), which states:

> (1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:
>
> > (a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.
> >
> > * * *
>
> (3) Notwithstanding sections (1) and (2) of this rule, the number of weeks of disqualification under ORS 657.215 shall be 52 weeks if:
>
> > * * *
> >
> > (b) The individual has two previous disqualifications under ORS 657.215, and those prior two disqualification determinations have become final.
>
> * * *

> (7) The department will review the number of occurrences of misrepresentation when applying the penalty as described in ORS 657.310(2). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. The department shall use the date the individual failed to report a material fact or willfully made a false statement as the date of the occurrence. For an individual subject to disqualification by administrative action under 657.215, the penalty will be:
>
> > (a) For the first or second occurrence within 5 years of the occurrence for which a penalty is being assessed, 15 percent of the total amount of benefits the individual received but to which the individual was not entitled.
> >
> > (b) For the third or fourth occurrence within 5 years of the occurrence for which a penalty is being assessed, 20 percent of the total amount of benefits the individual received but to which the individual was not entitled.
> >
> > (c) For the fifth or sixth occurrence within 5 years of the occurrence for which a penalty is being assessed, 25 percent of the total amount of benefits the individual received but to which the individual was not entitled.
> >
> > (d) For the seventh or greater occurrence within 5 years of the occurrence for which a penalty is being assessed, 30 percent of the total amount of benefits the individual received but to which the individual was not entitled.
> >
> > (e) In cases of forgery or identity theft, 30 percent of the amount of benefits the individual received but to which the individual was not entitled.
>
> * * *

The Department paid claimant $4,481 in benefits for the weeks at issue. As explained above, however, claimant was only eligible for $869 in benefits for those weeks. As such, claimant was overpaid $3,612 in benefits for the weeks at issue.

The above overpayment was the result of claimant's failure to correctly report her earnings for the weeks at issue. Claimant had earnings for all seven of the weeks at issue, but only reported earnings for two of those weeks, and under-reported her earnings for those two weeks. At hearing, claimant testified that she had worked for the employer, but was unable to recall the specifics of when she had worked for them. Transcript at 23.

When asked why she failed to accurately report her earnings for the weeks at issue, claimant testified, "…I was not claiming… unemployment and working at the same time. Because I had… already… completed the penalty weeks previously. And so I knew that it is against policy to… do both. And… so I did not." Transcript at 26. Despite this, claimant also testified that nobody else had access to her account, such that they could have claimed benefits on her claim. Transcript at 27. As such, the record shows, by a preponderance of the evidence, that claimant claimed benefits for the weeks at issue, and that claimant failed to accurately report her earnings during the weeks at issue.

Given claimant's above assertions, she did not provide a coherent explanation for why she failed to accurately report her earnings for the weeks at issue. Additionally, the record shows that claimant had previously been assessed overpayments and found to have committed willful misrepresentation for the same type of issue on two prior occasions. Therefore, it stands to reason that claimant was aware of the need to accurately report her earnings while claiming benefits, and that she failed to do so in order to obtain benefits to which she was not entitled. The Department has therefore met their burden to show that the overpayment was the result of claimant's willful misrepresentation of material fact.

Because the overpayment was the result of claimant's willful misrepresentation, claimant is liable for a monetary penalty. As discussed above, the correct amount of claimant's overpayment was $3,612, and the monetary penalty is therefore based on this figure. For each of the seven weeks at issue, claimant willfully made a misrepresentation by failing to accurately report her earnings, even though this did not result in an overpayment of benefits for week 47-24. As such, under OAR 471-030-0052(7), claimant had seven occurrences of misrepresentation. Under OAR 471-030-0052(7)(d), this results in an assessment of a monetary penalty of 30 percent of the total amount of benefits overpaid. Here, 30 percent of the overpaid benefits equates to $1,083.60, and claimant is therefore liable for a monetary penalty in that amount.

Finally, the record shows that claimant had two previous disqualifications from benefits under ORS 657.215—i.e., that she received penalty disqualifications from benefits on two separate occasions, one in 2013 and one in 2021. As such, OAR 471-030-0052(3)(b) requires that claimant be assessed a 52-week penalty disqualification from future benefits.

For the above reasons, claimant made a willful misrepresentation of material fact to obtain benefits to which she was not entitled. Claimant is therefore liable for an overpayment of $3,612 that she is required to repay to the Department, a $1,083.60 monetary penalty, and a 52-week penalty disqualification from future benefits.

DECISION: Order No. 26-UI-338138 is modified, as outlined above.

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

DATE of Service: October 28, 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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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*

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