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

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EMPLOYMENT APPEALS BOARD DECISION
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14-AB-0004

*Application for Review of Hearing Decision 13-UIB-12573 Dismissed
Hearing Decisions 14-UI-09668, 14-UI-09669 and 14-UI-09674 Affirmed
Overpayment Assessed*

PROCEDURAL HISTORY: On July 3, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision reducing claimant's benefits from May 27, 2012 through June 29, 2013 (decision # 132915). Claimant filed a timely request for hearing. On August 19, 2013, ALJ Shoemake conducted a hearing, and on August 22, 2013 issued Hearing Decision 13-UIB-12573, affirming the Department's decision. On September 11, 2013, Hearing Decision 13-UIB-12573 became final without an application for review having been filed. On October 7, 2013 the Department served notice of an administrative decision concluding that claimant was overpaid and liable to repay \$430 in regular unemployment insurance benefits for the week of May 27, 2012 through June 2, 2012, and \$1,290 in SUD¹ benefits for the weeks from March 31, 2013 through April 20, 2013 (decision # 100609). The Department also served notice of an administrative decision concluding that claimant was overpaid \$2,600 in SUD benefits from April 21, 2013 through June 29, 2013 that she is liable to have deducted from any future benefits payable (decision # 100239). The Department also served notice of an administrative decision concluding that claimant was overpaid and liable to repay \$18,490 in EUC² benefits for the weeks from June 3, 2012 through March 30, 2013, and not entitled to a waiver of the overpayment (# 101128). On December 4, 2012, ALJ Shoemake conducted a consolidated hearing on the overpayment decisions, which was continued to January 13, 2014. On December 5, 2013, claimant filed an application for review of Hearing Decision 13-UIB-12573 with the Employment Appeals Board (EAB). On January 13, 2014, ALJ Shoemake concluded the consolidated hearing on the overpayment decisions, and on January 31, 2014 issued Hearing Decisions 14-UI-09668, 14-UI-09669 and 14-UI-09674, affirming those decisions. On February 13, 2014, claimant filed applications for review of Hearing Decisions 14-UI-09668, 14-UI-09669 and 14-UI-09674 with EAB.

¹ Supplemental Unemployment Insurance Benefits for Dislocated Workers.

² Emergency Unemployment Compensation.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 13-UIB-12573, 14-UI-09668, 14-UI-09669 and 14-UI-09674. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 14-AB-0004, 2014-EAB-0275, 2014-EAB-0277 and 2014-EAB-0278). EAB considered the hearing records and claimant's written argument.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from May 27, 2012 through June 29, 2013 (weeks 22-12 through 26-13), the weeks at issue. Her weekly benefit amount was \$507.

(2) When claimant claimed benefits for weeks 22-12 through 16-13, she failed to disclose that she was receiving an annuity based on her previous work for a base year employer under a plan maintained or contributed to by the base year employer. The Department therefore paid claimant \$507 in benefits for each of those weeks, for a total of \$23,829 in benefits, including \$21,801 in EUC benefits.

(3) The Department paid claimant \$507 in benefits per week for weeks 17-13 through 22-13 because it failed to reduce her benefits after learning that she was receiving an annuity based on her previous work under a plan maintained or contributed to by a base year employer. The Department paid claimant \$82 in benefits per week for weeks 23-13 through 26-13 because it miscalculated the amount her benefits were reduced due to the annuity she was receiving. The Department therefore paid claimant \$3,370 in benefits for weeks 17-13 through 26-13.

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review of Hearing Decision 13-UIB-12573, and her application for review therefore is dismissed. Claimant was overpaid \$22,810 in benefits, including \$18,490 in EUC benefits, to which she is not entitled. Claimant is liable to repay \$20,210, including \$18,490 for the EUC benefits. Claimant is liable to have \$2,600 deducted from any future benefits otherwise payable to her under ORS chapter 657, but is not liable to repay the \$2,600. The Department did not err in not waiving collection of the \$18,490 in overpaid EUC benefits.

Application for Review of Hearing Decision 13-UIB-12573. ORS 657.270(4) required claimant's application for review of Hearing Decision 13-UIB-12573 to be filed no later than September 11, 2013; it was filed on December 5, 2013. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides:

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

Claimant argued that she failed to file a timely application for review of Hearing Decision 13-UIB-12573 because she suffers from a “delusional disorder with paranoia features” and “did not understand the significance of” the decision. However, claimant’s mental disability did not prevent her from filing timely requests for hearing on decisions # 132915, # 100239, # 100609 and # 101128, and timely applications for review of Hearing Decisions 14-UI-09668, 14-UI-09669 and 14-UI-09674. Claimant failed to show that her mental disability prevented her from filing a timely application for review of Hearing Decision 13-UIB-12573. Good cause to extend the filing deadline has not been shown.

Because the application for review of Hearing Decision 13-UIB-12573 was filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

Overpayments. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual 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 individual’s knowledge or intent. *Id.* ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual’s false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within 52 weeks following the week in which the decision establishing the erroneous payment became final.

In Hearing Decision 13-UIB-12573, the ALJ found that during the weeks at issue, claimant was receiving a \$1,861 per month annuity based on her previous work for a base year employer under a plan maintained or contributed to by the base year employer.³ The ALJ therefore concluded that under ORS 657.205 and OAR 471-030-0020 (December 23, 2001), claimant’s benefits were reduced by \$430 per week for the weeks at issue.⁴ Hearing Decision 13-UIB-12573 became final on September 11, 2013 without an application for review having been filed, and claimant’s late application for review has been dismissed. Thus, as a matter of law, claimant’s weekly benefits were reduced by \$430 for the weeks at issue, and claimant was entitled to only \$77 per week for those weeks. The Department therefore overpaid claimant \$430 per week for weeks 22-12 through 22-13, and \$5 per week for weeks 23-13 through 26-13. For weeks 22-12 through 16-13, the Department overpaid claimant a total of \$20,210, including \$18,490 in EUC benefits. For weeks 17-13 through 26-13, the Department overpaid claimant a total of \$2,600.

The Department overpaid claimant \$20,210 for weeks 22-12 through 16-13 because claimant failed to disclose the material fact that she was receiving an annuity based on her previous work for a base year employer under a plan maintained or contributed to by the base year employer. Regardless of claimant’s knowledge or intent, she is liable under ORS 657.310(1) to either repay the \$20,210 or have it deducted from any future benefits otherwise payable to her under ORS chapter 657. However, the Department

³ Hearing Decision 13-UIB-12573 at 2-3.

⁴ *Id.* at 3.

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overpaid claimant \$2,600 for weeks 17-13 through 26-13 because it initially failed to reduce her benefits after learning that she was receiving the annuity, and then miscalculated the amount her benefits were reduced due to the annuity. Claimant therefore is liable under ORS 657.315(1) to have the \$2,600 deducted from any future benefits otherwise payable to her under ORS chapter 657. However, claimant is not liable to repay the \$2,600 under ORS 657.310(1).

The Department overpaid claimant \$18,490 in EUC benefits. A state agency may waive collection of any overpaid EUC benefits if it determines that the overpayment was made without fault on the part of the individual and requiring repayment from the individual would be “contrary to equity and good conscience.” Public Law 110-252, §4005(b)(1) and (2). In the present case, the overpayment was made because claimant failed to disclose that she was receiving an annuity based on her previous work for a base year employer under a plan maintained or contributed to by the base year employer. We therefore agree with the department that claimant was not “without fault,” and conclude that the Department did not err in not waiving collection of the \$18,490 in overpaid EUC benefits.

In sum, claimant did not establish good cause to file an untimely application for review of Hearing Decision 13-UIB-12573, and her application for review therefore is dismissed. Claimant was overpaid \$22,810 in benefits, including \$18,490 in EUC benefits, to which she is not entitled. Claimant is liable to repay \$20,210, including the \$18,490 for the EUC benefits. Claimant is liable to have \$2,600 deducted from any future benefits otherwise payable to her under ORS chapter 657, but is not liable to repay the \$2,600. The Department did not err in not waiving collection of the \$18,490 in overpaid EUC benefits.

DECISION: The application for review of Hearing Decision 13-UIB-12573 is dismissed. Hearing Decisions 14-UI-09668, 14-UI-09669 and 14-UI-09674 are affirmed.

Susan Rossiter and D. E. Larson;
Tony Corcoran, not participating.

DATE of Service: March 13, 2014

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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.