

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0132

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On September 18, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$16,766 overpayment, a \$2,514.90 monetary penalty, and 52 penalty weeks (decision #193742). Claimant filed a timely request for hearing. On January 6, 2014, ALJ Menegat conducted a hearing, and on January 9, 2014 issued Hearing Decision 14-UI-08251 affirming the Department's decision. On January 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 3, 2011, claimant filed an initial claim for unemployment insurance benefits, with a weekly benefit amount of \$496. The maximum weekly benefit amount in effect at that time was \$507. She filed another initial claim on May 29, 2012, with a weekly benefit amount of \$401.

(2) Claimant claimed benefits for the period June 17, 2012 to July 28, 2012 (weeks 25-12 to 30-12), August 5, 2012 to August 25, 2012 (weeks 32-12 to 34-12), and November 25, 2012 to July 20, 2013 (weeks 48-12 to 29-13). Those are the weeks at issue.

(3) During the weeks at issue, claimant worked for S. Brooks and Associates, Inc. (employer). Claimant worked 31 to 40 hours per week, and earned \$14.95 per hour. Claimant worked full time (forty hours per week) during weeks 26-12, 29-12, 30-12, 32-12, 34-12, 48-12, 02-13, 06-13, 07-13, 12-13, 15-13, 19-13, and 28-13.

(4) When claiming benefits for the weeks at issue, claimant was required to answer the following question: "If you worked last week, or received or will receive vacation or holiday pay for the week, fill in the number of hours and your gross earnings (before deductions)." Exhibit 1. Claimant reported she worked no hours and had no earnings for weeks 25-12 to 30-12, and weeks 32-12 to 33-12. Claimant underreported her earnings and the hours she worked for the remaining weeks at issue, in the amounts shown on the Schedule of Adjustments. Exhibit 1.

(5) Based, in part, on claimant's answers to that question, the Department paid claimant \$16,766 in unemployment insurance benefits for the weeks at issue.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude claimant willfully made false statements to the Department to obtain unemployment benefits. Claimant received remuneration that reduced or eliminated her weekly benefit amount. Claimant was paid \$16,766 in benefits to which she was not entitled, and which she must repay or have withheld from benefits otherwise payable. She is subject to a \$2,514.90 monetary penalty and 52 penalty weeks.

Remuneration. ORS 657.150(6) provides that an eligible unemployed individual who has employment in any week shall have his weekly benefit amount reduced by the amount of earnings paid or payable that exceeds ten times the minimum hourly wage or one-third his weekly benefit amount, whichever is greater. ORS 657.100(1) provides that an individual is not "unemployed" 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 more than the individual's weekly benefit amount. ORS 657.100(2) provides that an individual who performs full-time services in any week for an employing unit is not unemployed.

Claimant had employment during each of the weeks she claimed. During weeks 52-12, 13-13, 27-13 and 29-13, claimant's weekly benefit amount was subject to reduction. During all other weeks at issue, claimant was not unemployed because she worked at least forty hours or earned more than her weekly benefit amount.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which he was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from future benefits otherwise payable to him under ORS chapter 657. That provision applies if the individual received the benefits because he made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of his knowledge or intent. ORS 657.310(1).

Claimant had earnings as reported in the "Actual Earnings" column on the Schedule of Adjustments contained in the Department's Administrative Decision #193742. Exhibit 1. Claimant earned more than her weekly benefit amount for all weeks at issue except weeks 52-12, 13-13, 27-13, and 29-13. Exhibit 1. Claimant underreported her earnings for all the weeks at issue. The amount of her earnings was material to determine the benefits to which she was entitled. ORS 657.150. As a result of her false statements, she received \$16,766 in benefits to which she was not entitled. Regardless of claimant's knowledge or intent in making the false statements, under ORS 657.310(1), she must repay the \$16,766 or have that amount withheld from future benefits otherwise payable.

Misrepresentation. An individual who willfully makes a false statement or misrepresentation, or willfully fails to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215.

We conclude claimant was subject to penalties because she willfully failed to report all of her earnings. Claimant asserted at hearing that a representative from the Department instructed her to report her earnings that remained after she made a payment toward a debt she owed in Washington. Transcript at 10 to 14. The Department had no record of a representative instructing claimant to report net earnings,

reduced earnings, or fewer hours than claimant worked. Each week when claimant filed her claim, she was directed to report her “gross earnings (before deductions).” Exhibit 1. It is improbable that claimant believed she should report net earnings and fewer hours than she worked. Moreover, claimant provided no explanation for having reported no earnings and no hours worked for weeks 25-12 through 30-12, 32-12 and 33-12, although she was working nearly full time during those weeks. In the absence of a plausible explanation for claimant’s reporting, it is more likely than not that she intentionally underreported her earnings and hours worked to qualify for benefits and to increase her benefit amount. Thus, claimant is subject to a penalty disqualification period.

The length of the penalty disqualification period is determined under OAR 471-030-0052(1), which provides that when the disqualification is imposed because the individual failed to accurately report work 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) (\$16,766), 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) (\$507), rounding off to the nearest two decimal places (33.07), multiplying the result by four (132.28) and rounding it up to the nearest whole number. However, the maximum number of penalty weeks allowed under ORS 657.215 is 52. Claimant therefore is disqualified from benefits for 52 weeks.

In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount equal to 15 percent of the amount of the overpayment. ORS 657.310(2). Claimant was overpaid \$16,766. Under ORS 657.310(2), she is subject to a monetary penalty of fifteen percent of that amount, \$2,514.90.

DECISION: Hearing Decision 14-UI-08251 is affirmed.

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

DATE of Service: February 19, 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>.

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