

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0332

*Modified
Overpayment, No Penalties*

PROCEDURAL HISTORY: On December 5, 2013, the Department issued an administrative decision that concluded that claimant voluntarily left work from Assisted Living Concepts, Inc. without good cause (decision #131106). Claimant filed a timely request for hearing. On December 6, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, had earnings that affected her weekly benefit amount, was disqualified from 27 weeks of future benefits, must repay \$2,894 in benefits to which she was not entitled, and was assessed a monetary penalty of \$434.10. Claimant filed a timely request for hearing. On February 11, 2014, ALJ Sime conducted hearings on both decisions. On February 14, 2014, ALJ Sime issued Hearing Decision 14-UI-10473, concluding claimant voluntarily left work with good cause, and Hearing Decision 14-UI-10494, concluding claimant had earnings that affected her weekly benefit amount and must repay \$2,894 in benefits to which she was not entitled, but that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, was not disqualified from future benefits, and was not assessed a monetary penalty. On February 25, 2014, claimant filed an application for review Hearing

Decision 14-UI-10494 with the Employment Appeals Board (EAB). On March 6, 2014, Hearing Decision 14-UI-10473 became final without an application for review having been filed.

No adversely affected party applied for review of that portion of Hearing Decision 14-UI-10494 concluding claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and was not subject to a disqualification of 27 penalty weeks or a monetary penalty of \$434.10. We therefore confine our review of Hearing Decision 14-UI-10494 to the issue of whether claimant was overpaid benefits in the amount of \$2,894.

Claimant submitted written argument to EAB. We considered the entire record and claimant's argument to the extent it was based on the record when reaching this decision.

The ALJ's decision refers repeatedly to the Schedule of Adjustments, which the ALJ did not admit into evidence. Under OAR 471-041-0090(1) (October 29, 2006), the Schedule of Adjustments sent to the parties with the Department's December 6, 2013 administrative decision is received into evidence to complete the record, and is attached as EAB Exhibit 1. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3). Unless such objection is received and sustained, the Schedule of Adjustments will remain in the record at EAB Exhibit 1.

FINDINGS OF FACT: (1) Claimant claimed benefits for the period November 11, 2012 to November 24, 2012 (weeks 46-12 and 47-12), and reported no earnings those weeks. The Department paid claimant \$122 for week 47-12. Blue Cross and Blue Shield subsequently reported earnings of \$609.21 for claimant for week 46-12. The Department determined claimant was overpaid \$122 for week 47-12.

(2) Claimant claimed benefits for the period January 6, 2013 to March 2, 2013 (weeks 2-13 through 9-13). Claimant reported no earnings for January 6, 2013 to February 2, 2013 (weeks 2-13 through 5-13). The Department paid claimant \$122 for each of weeks 2-13 through 5-13. National Flora An FTD.com Co. subsequently reported earnings for weeks 2-13 through 5-13 as shown on the Schedule of Adjustments. The Department determined claimant was overpaid \$122 for each of weeks 2-13 and 4-13. Claimant reported earnings of \$99 for week 7-13, and National Flora An FTD.com Co. reported earnings of \$98.28 for that week. The Department paid claimant \$112 for week 7-13, and determined claimant was underpaid \$1 for week 7-13.

(3) Claimant claimed benefits for the period April 21, 2013 to May 4, 2013 (weeks 17-13 and 18-13), and reported no earnings those weeks. The Department paid claimant \$122 for each of those weeks. Assisted Living Concepts, Inc. subsequently reported earnings of \$461.24 for claimant for each of weeks 17-13 and 18-13. The Department determined claimant was overpaid \$122 for each of weeks 17-13 and 18-13.

(4) Claimant claimed benefits for the period May 5, 2013 to September 21, 2013 (weeks 19-13 through 38-13). The Department paid claimant benefits in the amounts shown on the Schedule of Adjustments for weeks 19-13 through 38-13, totaling \$1,961. Assisted Living Concepts, Inc. subsequently reported that claimant voluntarily left work during week 18-13. Based on administrative decision #131106, the Department determined claimant was overpaid \$1,961 for weeks 19-13 through 38-13.

(5) Claimant claimed benefits for the period of September 22, 2013 to October 12, 2013 (weeks 39-13 through 41-13), and reported no earnings for weeks 39-13 through 41-13. The Department paid claimant \$108 for each of weeks 39-13 to 41-13. Super 8 Inn & Suites subsequently reported earnings of \$205.85 for week 39-13, \$286.40 for week 40-13, and \$358 for week 41-13. The Department determined claimant was overpaid \$108 for each of weeks 39-13, 40-13 and 41-13.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid benefits, but modify the amount based on Hearing Decision 14-UI-10473, concluding claimant voluntarily left work with good cause. Claimant received \$933 in benefits to which she was not entitled, and which she is liable to either repay or have deducted from any future benefits otherwise payable to her under ORS chapter 657.

ORS 657.310(1) provides that if an individual received benefits to which the individual was not entitled because the individual, regardless of the individual's 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, the individual 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.

The ALJ concluded in Hearing Decision 14-UI-10494 that claimant received \$2,894 in benefits to which she was not entitled.¹ We agree that the preponderance of the evidence shows claimant failed to report all of her earnings for weeks 47-12, 2-13, 4-13, 17-13, 18-13, 39-13, 40-13 and 41-13. Thus, claimant received benefits to which she was not entitled in the amount of \$122 for each of weeks 47-12, 2-13, 4-13, 17-13 and 18-13, and \$108 for each of weeks 39-13, 40-13 and 41-13 because her earnings exceeded her weekly benefit amount. *See* ORS 657.150(6). For the week ending November 24, 2012, claimant was not entitled to benefits because it was a waiting week. For the week ending February 16, 2013, claimant was underpaid \$1. Thus, her total overpayment amount based on underreported earnings is \$933.

However, we disagree with the ALJ's conclusion that claimant was overpaid benefits for the period of May 5, 2013 to September 21, 2013 (weeks 19-13 through 38-13). The Department determined claimant was overpaid for those weeks because she failed to report a work separation during the week ending May 4, 2013 (week 18-13), and subsequently denied those weeks with decision #131106, concluding claimant voluntarily left work without good cause. However, on February 14, 2014, the ALJ issued Hearing Decision 14-UI-10473, reversing decision #131106, and concluding claimant voluntarily left work with good cause. Thus, claimant was not disqualified from or overpaid benefits for weeks 19-13 through 38-13.

In sum, claimant received \$933 in benefits to which she was not entitled, and which she is liable to either repay or have deducted from any future benefits otherwise payable to her under ORS chapter 657.

DECISION: Hearing Decision 14-UI-10494 is modified, as outlined above.

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

¹ Hearing Decision 14-UI-10494 at 4.

DATE of Service: March 27, 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.