

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0416

Affirmed
Ineligible for EUC Benefits

PROCEDURAL HISTORY: On December 27, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant is ineligible for Emergency Unemployment Compensation (EUC) benefits from June 23 through December 21, 2013 (decision # 84841). Claimant filed a timely request for hearing. On March 10, 2014, ALJ Kirkwood conducted a hearing, and on March 12, 2014 issued Hearing Decision 14-UI-12144, affirming the Department's decision. On March 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 24, 2013, claimant filed a claim for EUC benefits, and claimed EUC benefits for the weeks from June 23 through December 21, 2013 (weeks 26-13 through 51-13), the weeks at issue. The Department initially paid claimant benefits for those weeks.

(2) During the weeks at issue, claimant had rights to compensation under Washington State unemployment compensation law.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant is ineligible for benefits for the weeks at issue.

EUC benefits are payable to individuals who "have exhausted all rights to regular compensation" under state law with respect to a benefit year and "have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law." See Supplemental Appropriations Act of 2008, Pub. L. 110-252 § 4001(b). Where, as here, the Department initially paid a claimant benefits, the Department has the burden to establish by a preponderance of evidence that the claimant is not eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In the present case, it is undisputed that during the weeks at issue, claimant had rights to compensation under Washington State unemployment compensation law. At hearing, claimant argued that he nevertheless should be found eligible for EUC benefits for those weeks because it was the Department's mistake to pay him benefits. However, the statute does not create an exception when it is the fault of the state agency that EUC benefits were mistakenly paid to the individual. Although claimant might have done nothing wrong in creating the situation that led to him receiving EUC benefits, we agree with the ALJ that claimant was not eligible to receive them.

The authority to determine whether claimant is liable to repay the Department for any EUC benefits he was overpaid lies with the Department. Where an overpayment is the result solely of the Department's error, however, the Department is limited under ORS 657.315 to collecting the overpayment by a withholding from future benefits payable to claimant during the 52 weeks following the date the overpayment decision becomes final. Claimant may contact the Department for information about overpayment waivers.

DECISION: Hearing Decision 14-UI-12144 is affirmed.

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

DATE of Service: April 1, 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.