

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0425

Modified
Overpayment Reduced

PROCEDURAL HISTORY: On August 22, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding Bethesda Lutheran Communities discharged claimant, but not for misconduct (decision # 90321). The employer filed a timely request for hearing. On October 22, 2013, ALJ Clink conducted a hearing, and on November 12, 2013, issued Hearing Decision 13-UI-04296, concluding claimant voluntarily left work without good cause on August 1, 2013 and disqualifying claimant from benefits until she earned and received remuneration from employment an amount at least equal to four times her weekly benefit amount after the week in which the separation occurred (week 31-13). On November 18, 2013, claimant filed an application for review with the Employment Appeals Board (EAB). On December 9, 2013, EAB issued Appeals Board Decision 2013-EAB-2324, affirming Hearing Decision 13-UI-04296. On January 8, 2014, Appeals Board Decision 2013-EAB-2324 became final without a petition for judicial review having been filed with the Oregon Court of Appeals. On January 29, 2014, the Department served notice of an administrative decision concluding claimant was overpaid \$3,719 in benefits. Claimant filed a timely request for hearing. On February 20, 2014, ALJ Lohr conducted a hearing, and on March 11, 2014 issued Hearing Decision 14-UI-12041, affirming the Department's decision. On March 19, 2014, claimant filed an application for review with EAB.

Claimant submitted written argument to EAB. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant filed a valid initial claim for benefits on November 27, 2012 with a weekly benefit amount of \$323.

(2) Claimant claimed unemployment insurance benefits for weeks from July 28, 2013 to September 7, 2013 (weeks 31-13 through 36-13), and September 15, 2013 to September 28, 2013 (weeks 38-13 through 39-13). The Department paid claimant \$2,427 in unemployment insurance benefits for those weeks.

(3) From week 32-13 through week 39-13, claimant earned and received remuneration from employment an amount at least equal to four times her weekly benefit amount.

(4) Claimant claimed unemployment insurance benefits for the weeks from September 29, 2013 to October 26, 2013 (weeks 40-13 through 43-13). The Department paid claimant \$1,292 in benefits for those weeks.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid benefits, but reduce the amount based on the hearing record. Claimant received \$2,427 in benefits to which she was not entitled, and which she is liable to have that amount deducted from any future benefits otherwise payable to her under ORS chapter 657.

An individual who has been overpaid benefits 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. ORS 657.315(1).

In Hearing Decision 14-UI-12041, the ALJ concluded that claimant was overpaid \$3,719 for weeks 31-13 through 36-13, and 38-13 through 43-13.¹ Claimant was disqualified from receiving benefits based on Appeals Board Decision 2013-EAB-2324, which became final on January 8, 2014 without a petition for judicial review having been filed with the Oregon Court of Appeals. We therefore agree with the ALJ that, as a matter of law, claimant was overpaid the \$2,427 in benefits she received from week 31-13, the week in which her disqualification began, through week 39-13, the week after which she had earned and received remuneration from employment an amount at least equal to four times her weekly benefit amount. However, claimant is not disqualified from receiving benefits for the weeks after her disqualification under Appeals Board Decision 2013-EAB-2324 ended, weeks 40-13 through 43-13. We therefore disagree with the ALJ's conclusion that claimant was not entitled to the \$1,292 in benefits she received for those weeks. Claimant therefore is not liable to have the \$1,292 deducted from any future benefits otherwise payable under ORS chapter 657.

In sum, claimant was overpaid \$2,427 in benefits for weeks 31-13 through 39-13, and is liable to have the \$2,427 deducted from any future benefits otherwise payable under ORS chapter 657. However, claimant was entitled to the \$1,292 in benefits she received for weeks 40-13 through 41-13, and therefore is not liable to have the \$1,292 deducted from any future benefits otherwise payable under ORS chapter 657.

DECISION: Hearing Decision 14-UI-12041 is modified, as outlined above.

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

DATE of Service: April 8, 2014

¹ Hearing Decision 14-UI-12041 at 2.

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.