

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0452

Affirmed
Benefits Withheld Under IRORA

PROCEDURAL HISTORY: On January 24, 2013, the Montana Department of Labor & Industries, Unemployment Insurance Division (MUID) served notice of an administrative decision concluding claimant was overpaid benefits and assessing an overpayment of \$2,750. That decision became final without claimant having filed a request for review. On October 31, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that, based on MUID's decision and MUID's request for collection assistance, the Department was required to withhold \$2,750 from any future benefits otherwise payable to claimant under his Oregon claim. Claimant filed a timely request for hearing of the Department's decision. On January 7, 2014, ALJ Menegat conducted a hearing at which claimant did not appear and issued Hearing Decision 14-UI-07912, dismissing claimant's request for a hearing. On January 7, 2014, claimant filed a request to reopen the hearing. On February 20, 2014, ALJ Clink conducted a hearing, and on March 4, 2014 issued Hearing Decision 14-UI-11561, allowing claimant's request to reopen but affirming the Department's decision to withhold \$2,750 from benefits otherwise payable to claimant. On March 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted to EAB a request that this matter be remanded for a new hearing because the ALJ either incorrectly interpreted the evidence offered at hearing or relied on inaccurate testimony from the Department's representative at the hearing when reaching her conclusions. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue, and gave claimant an ample opportunity to dispute the evidence provided by the Department's representative, which claimant did at length at the hearing. The ALJ provided to claimant the reasonable opportunity for the fair hearing that is required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). Because the evidence currently in the hearing record is sufficient to support a decision, EAB does not agree that a new hearing is necessary or that a remand of this matter will serve any sound purpose. Claimant's request for a new hearing is denied. EAB considered claimant's remaining arguments when reaching this decision.

Because no adversely affected party sought review of that portion of Hearing Decision 14-UI-11561 that allowed claimant's request to reopen the hearing, EAB confined its review to the withholding of claimant's benefits under IRORA.

FINDINGS OF FACT: (1) Since approximately the late 1970s, claimant has, from time to time, claimed unemployment insurance benefits through unemployment insurance programs administered in several states, including Oregon, Montana and Idaho.

(2) In 2012, claimant tried to open a new unemployment insurance claim in Oregon. A Department representative told claimant that he did not have sufficient Oregon wages to qualify for an Oregon claim and suggested, based on his wage history, that claimant try to open a claim Montana. Claimant did so and opened a Montana claim through MUID. Claimant received Montana benefits through MUID until approximately December 31, 2012. When his Montana benefits stopped, claimant called MUID. Claimant understood the MUID representative to state that the Montana benefits had stopped because the Department had failed to pay him some benefits owed to him in 2009 or 2010 under an Oregon claim.

(3) Beginning sometime around late 2012, claimant began to receive notices from MUID that he had been overpaid Montana benefits. The letters stated that MUID wanted to collect the overpaid benefits. Claimant called an MUID representative and understood the representative to state that he should ignore the overpayment notices from MUID because the Department owed the overpaid funds to MUID and claimant did not. In January 2013, claimant received a notice from MUID stating that it had assessed an overpayment of \$2,750 against him. Although the notice stated that claimant could request a hearing on MUID's administrative decision if he disagreed with it, claimant did not request a hearing. Instead, claimant made a written request for a waiver of this overpayment. However, claimant did not send the waiver request to MUID, but sent it to a clearinghouse for interstate unemployment insurance claims. Claimant did not follow up on the status of this waiver request.

(4) In 2013, claimant started an Oregon unemployment insurance claim. Claimant's claim was determined valid and his weekly benefit amount was \$181. Sometime before October 23, 2013, MUID formally requested that the Department collect the overpayment claimant owed to MUID under the Interstate Reciprocal Overpayment Arrangement (IRORA). MUID certified to the Department that claimant owed MUID \$2,750 in overpaid benefits and requested that the Department recover these funds from the Oregon benefits it would otherwise pay to claimant and send those funds to MUID. On October 23, 2013, the Department mailed to claimant the administrative decision stating that it was going to withhold the full amount he owed to MUID, \$2,750, from any future benefits otherwise payable to him based on MUID's request and its January 24, 2013 administrative decision. The Department's administrative decision advised claimant that if he had any questions about the overpayment to contact MUID. For the weeks ending October 26, 2013 and November 2, 2013 (weeks 43-13 and 44-13), the Department withheld from claimant the \$181 in benefits it would have paid him to send to MUID. Sometime after November 2, 2013, claimant appeared to exhaust his Oregon unemployment benefits and the Department stopped paying benefits to him.

(5) On November 18, 2013, claimant spoke by telephone with a Department representative about the Department's administrative decision to withhold the Montana overpayment from his Oregon benefits.

The representative told claimant, among other things, that if he disagreed with the Montana overpayment decision he needed to deal with MUID to have the decision changed or to have the overpayment waived, which would stop the Department's withholding of benefits. For the weeks ending December 7, 2013 and December 14, 2013 (weeks 49-13 and 50-13), the Department determined that claimant had not exhausted his Oregon benefits and that there was still \$363 in claimant's unemployment insurance account. The Department withheld \$181 and \$182, respectively, from benefits it would otherwise have paid to claimant for those weeks. On December 4, 2013, the Department remitted to MUID the \$362 in benefits it would have paid to claimant for weeks 43-13 and 44-13. On February 5, 2013, the Department remitted to MUID the \$363 in benefits it would have paid to claimant for weeks 49-13 and 50-13.

(6) Sometime in January 2014, claimant sent a written request to MUID to waive the overpayment it had assessed. MUID has not waived the overpayment.

CONCLUSIONS AND REASONS: The Department is authorized to withhold unemployment benefits otherwise payable to claimant to offset the balance that claimant owes to MUID.

Beginning in 1987, several states entered into IRORA. U.S. Department of Labor, Employment and Training Handbook No. 392 (2d edition, Change 1) Appendix B, at http://www.workforcesecurity.doleta.gov/dmstree/handbooks/392/392_2cla.pdf. One of the purposes of IRORA is to provide methods for state unemployment insurance agencies to assist other state agencies in recovering overpaid benefits. Under IRORA, state agencies subscribing to the agreement are authorized to act as agents for each other in recovering overpayments, including withholding overpaid amounts from benefits that they would otherwise pay to an individual to enable another state to collect benefits that it overpaid. *Id.* Oregon and Montana have entered into IRORA and have adopted statutes and regulations to implement the reciprocal collection of overpaid benefits. *See* http://workforcesecurity.doleta.gov/unemploy/pdf/istate_agree_recip_overpay_recov.pdf; ORS 657.785; OAR 471-030-0210 (February 23, 2014) (patterned on regulatory language suggested in IRORA); ARM 24.11.1221-24.11.1229 (patterned on regulatory language suggested in IRORA).

ORS 657.785 authorized the Department to withhold benefits otherwise owed to claimant upon receiving a request under IRORA from MUID to collect amounts necessary to recover MUID's overpayment to claimant. We infer from the Department representative's testimony at hearing that MUID sent to the Department the necessary information and documents to establish under IRORA that claimant owed an overpayment to MUID, that the overpayment determination was final, and the current amount of the uncollected overpayment. Audio at ~19:07, ~19:47; OAR 471-030-0210(3)(a). MUID's overpayment to claimant was legally collectible under Montana statutes. *See* MCA 39-51-3206(1) and (2) (overpaid benefits may be collected by direct payment to MUID or offsetting the overpaid amount against future benefits payable); OAR 471-040-0210(3)(a)(A)(1). It appears that MUID's request to the Department for assistance in collecting an overpayment from claimant met all requirements to authorize the Department to withhold benefits from claimant. The administrative decision that the Department issued to claimant appears to have provided all information required to implement a withholding to collect the overpayment owed to MUID. OAR 471-040-0210(3)(b); Record Document, Administrative Decision, October 23, 2013. It appears that the Department was authorized to withhold claimant's benefits under OAR 471-040-00210 and to send them to MUID to allow it to recover the overpayment of benefits it had assessed to claimant.

Claimant contended that MUID's administrative determination that he owed it a debt for overpaid benefits was incorrect. Although the rationale underlying claimant's argument was difficult to follow, claimant's ultimate contention was that the Oregon Department, and not him, should have been required to pay the overpaid amounts to MUID. Audio at ~30:38, ~31:28, ~36:35. Claimant's argument about his lack of responsibility for the overpayment should have been raised to MUID before MUID's determination that claimant was liable for the overpayment became a final determination. OAR 471-040-0210(3)(b)(F) forbids a redetermination of MUID's final overpayment determination. Moreover, principles of decision finality otherwise preclude claimant from collaterally attacking the correctness of MUID's determination in this separate collection proceeding that is before us. Claimant's proper course for protesting the legitimacy of MUID's administrative decision was through requesting a hearing with MUID on its decision, which he did not do. Because there is no jurisdiction to unsettle MUID's final administrative determination, EAB has no authority to address claimant's argument or the evidence that he presented in support of it.

Claimant also contended that it was improper for the Department to withhold unemployment benefits from him before a hearing was held on that withholding. Audio at ~36:28, 47:20. EAB construes claimant's argument as a claim that he was denied due process under the United States Constitution. Claimant's apparent position is correct that the due process clauses of the federal constitution requires a meaningful opportunity to be heard before an individual is deprived of property. *See generally Matthews v. Eldridge*, 424 US 319, 96 S Ct 893 (1976) (due process did not require evidentiary hearing prior to termination of Social Security benefits); *State ex rel Juvenile Department v. Geist*, 310 Or 176, 190, 796 P2d 1193 (1990) (citing *Matthews* in the context of due process protections in termination of parental rights proceedings). Relief is required under the due process clause only if it appears that the fairness of the proceeding might have been impaired by a pre-hearing deprivation of property.

Claimant had the burden to establish that the Department's decision to provide overpayment recovery assistance to MUID before a hearing so prejudiced his case that the fundamental fairness of the Department's recovery proceeding was impaired. *See Geist*, 310 Or at 191. Claimant had notice of MUID's overpayment determination when it was issued and chose not to request a hearing where he could set out any objections he had to the assessment of an overpayment. Since MUID's overpayment determination apparently offered to claimant a meaningful opportunity to be heard, it met due process requirements and was not fundamentally unfair. In addition, MUID had the authority under Montana statutes to withhold benefits from claimant to collect its overpayment and could have done so without the Department's assistance if claimant was receiving Montana benefits. *See MCA 39-51-3206(1); MCA 39-51-3206(2)*. It is difficult to determine how the Department's enforcement efforts on behalf of MUID might have been fundamentally unfair simply because they were undertaken before a hearing when MUID had already provided due process protections when it established the fact and amount of claimant's overpayment. Claimant did not present credible evidence that the Department's collection and recovery proceeding prejudiced him in any way other than depriving him of receiving benefits, or that there was a cognizable likelihood that, based on the Department's procedures for collecting overpayment requests under IRORA, the information received from a requesting state would result in a wrongful decision to withhold benefits. Although the Department's pre-hearing withholding of benefits to claimant might have had an impact on claimant's finances, claimant failed to show that it was fundamentally unfair under the circumstances of a collection proceeding to recover a debt for which claimant had been held responsible in the prior proceeding in Montana. On *de novo* review, we are

satisfied that the Department's actions in its proceeding to recover the overpayment for MUID was fundamentally fair since he ultimately had a hearing on the Department's authority to withhold benefits under IRORA and he had already had an opportunity to be heard on MUID's determination that benefits had been overpaid to him and the amount of the overpayment..

Throughout the hearing, claimant also raised many issues he had with the Department's accounting for the funds in his unemployment account, and stated repeatedly that he thought there were additional funds in the account that should be paid to him. Audio at ~32:25, ~33:52, ~34:55, ~52:00, ~54:08, ~56:15. Because these issues were not included in the administrative decision or the notice for the hearing, the ALJ refused to consider them. Audio at ~27:53, ~32:50, ~48:02; Record Documents, October 23, 2013 Administrative Decision, February 5, 2014 Notice of Hearing. Although OAR 471-040-0025(8) (August 1, 2004) allows an ALJ to accept jurisdiction of new issues at the hearing if other interested parties have waived their right to notice, it does not require that the ALJ do so. Given claimant's wide-ranging arguments at hearing, and the ALJ's clear desire to maintain focus on the issues directly implicated by MUID's request for recovery assistance, the ALJ did not abuse her discretion in refusing to consider the many new issues that claimant raised.

The Department was authorized under IRORA to withhold unemployment insurance benefits otherwise payable to claimant to offset the balance of the overpayment he owed to MUID.

DECISION: Hearing Decision 14-UI-11561 is affirmed.

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

DATE of Service: April 29, 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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