

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0639

*Modified
Overpayment*

PROCEDURAL HISTORY: On November 13, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120522). Claimant filed a timely request for hearing. On November 26, 2013, the Department served notice of an administrative decision (decision # 195530), assessing a \$414 overpayment, \$62.10 in monetary penalties, and 4 penalty weeks based on decision # 120522. Claimant filed a timely request for hearing.

On December 18, 2013 ALJ Clink conducted a hearing on decision # 120522, and on December 19, 2013 issued Hearing Decision 13-UI-06892, affirming the Department's decision. Claimant filed an application for review with the Employment Appeals Board (EAB). On January 31, 2014, EAB issued decision 2014-EAB-2532, affirming Hearing Decision 13-UI-06892.

On February 4, 2014, ALJ Lohr conducted a hearing on decision # 195530, and on April 2, 2014, issued Hearing Decision 14-UI-14042, affirming the Department's decision. On April 17, 2014, claimant filed an application for review of Hearing Decision 14-UI-14042 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. Even if we had considered the written argument, the outcome of this decision would remain the same.

FINDINGS OF FACT: (1) On October 15, 2013, claimant filed an initial claim for unemployment insurance benefits. Claimant's weekly benefit amount was \$138. The maximum weekly benefit amount at the time of claimant's initial claim was \$538.

(2) Effective September 5, 2013, claimant resigned her position with Little Genius Montessori. She subsequently attempted to rescind her resignation, but her employer would not allow her to do so,

explaining that she lacked the qualification to work in the position she had asked to return to should the employer allow her to rescind her resignation.

(3) Prior to filing her initial claim for benefits, claimant asked a Department employee how to characterize her work separation. Claimant left the conversation with the impression that she should report that she was unemployed due to a lack of work, based on her attempt to rescind her resignation and the employer's statement about her lack of qualifications.

(4) Claimant filed weekly claims for benefits for the weeks of October 20, 2013 through November 9, 2013 (weeks 43-13 through 45-13). The Department paid claimant \$138 per week in benefits based on her representation that she was unemployed due to a lack of work.

(5) The Department's decision concluding claimant voluntarily left work without good cause (decision # 120522), which was affirmed by the Office of Administrative Hearings and Employment Appeals Board, became final as a matter of law in mid-February 2014.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid benefits in the amount of \$414, but we disagree that claimant made a willful misrepresentation to obtain benefits and conclude that claimant is not liable for monetary or disqualification penalties.

ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled 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. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

As a matter of law, claimant voluntarily left her employment at Little Genius Montessori without good cause, and is, therefore, disqualified for benefits from October 20, 2013 through November 9, 2013. She received \$414 in benefits during that period that she was not entitled to receive. The reason claimant received benefits because she reported to the Department that she was unemployed due to a lack of work, rather than reporting that her work separation was a voluntary leaving. Regardless of claimant's knowledge or intent in so reporting, it was claimant's false statement about the nature of her work separation that caused the overpayment. Therefore, claimant is liable to repay the Department \$414 in unemployment insurance benefits to which she was not entitled.

In Hearing Decision 14-UI-14024, the ALJ found as fact that "[c]laimant represented to the Employment Department that she had been laid off from work because she knew she would receive unemployment benefits if she stated she had been laid off due to lack of work." Hearing Decision 14-UI-14024 at 2. The ALJ reasoned that, because claimant "knew she would receive unemployment insurance benefits if she reported . . . that she was laid off due to lack of work," she willfully misrepresented the facts of her work separation to obtain them. *Id.* at 3. We disagree.

There is no dispute that claimant misreported her work separation. However, the preponderance of the evidence in the record fails to show that claimant's receipt of benefits in a previous claim associated with a layoff motivated claimant to falsely claim she had been laid off when reporting the work

separation at issue here to the Department. Although claimant submitted a resignation to her employer, and has been found to have voluntarily left her job, claimant averred that she did not believe she had quit her job and was confused about how to report her work separation. Given that claimant attempted to rescind her resignation, that the employer refused to allow her to do so, and that the employer told claimant lacked the qualifications to return to her teaching job with the employer, claimant's assertion that she was confused as to how the Department wanted her to characterize the separation was credible. Moreover, claimant sought assistance from a Department employee to resolve her confusion. Although what transpired during the conversation is in dispute, there is no credible dispute that claimant left the conversation sincerely believing that she should report her separation as a lay off due to lack of work, and she acted on that belief. Given the circumstances, it is more likely than not that claimant's failure to accurately report her work separation in this instance was the result of her confusion rather than a willful intent to obtain benefits she knew or suspected she was not entitled to receive.

The record fails to show that claimant had the requisite intent to support misrepresentation penalties in this case. Accordingly, while we agree with the ALJ that claimant was overpaid and must repay \$414 to the Department, we conclude that claimant is not subject to any monetary or disqualification penalties.

DECISION: Hearing Decision 14-UI-14042 is modified.

Susan Rossiter and J.S. Cromwell, *pro tempore*;
Tony Corcoran and D. E. Larson, not participating.

DATE of Service: May 21, 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.