

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0779

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On January 10, 2014, the Oregon Employment Department (the Department) served a notice concerning an administrative decision assessing a \$920.00 overpayment, a \$230.00 monetary penalty and 7 penalty weeks (decision # 215976). Claimant filed a timely request for hearing. On April 28, 2014, ALJ Sime conducted a hearing, and on April 29, 2014, issued Hearing Decision 14-UI-16306, affirming the Department's decision. On May 7, 2014, claimant filed an application for review of Hearing Decision 14-UI-16306 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits on July 8, 2013. Her weekly benefit amount was \$184. The maximum benefit amount in effect at the time of claimant's initial claim filing was \$538.

(2) Claimant filed weekly claims, and received regular benefits, for the weeks including November 17 through December 21, 2013 (weeks 47-13 through 51-13), the weeks at issue.

(3) During the weeks at issue claimant was employed by The Cleaning Authority. During the week ending November 23, 2013 (week 47-13), claimant worked 34 hours and earned \$327.88. During the week ending November 30, 2013 (week 48-13), claimant worked 29 hours and earned \$302.74. During the week ending December 7, 2013 (week 49-13), claimant worked 26 hours and earned \$276.40. During the week ending December 14, 2013 (week 50-13), claimant worked 31 hours and earned \$324.88. During the week ending December 21, 2013 (week 51-13), claimant worked at least 34 hours and earned \$378. When claimant filed her weekly claim for benefits for each of those weeks, she was asked the following question: "If you worked [during the] week...fill in the number of hours and your gross earnings (before deductions)." Exhibit 1. In response to that question for each of her weekly claims, claimant responded "No" and did not report any hours or earnings despite knowing she had worked hours and earned wages during each of those weeks. Exhibit 1. Because of claimant's responses, the Department paid her \$184 in regular benefits for each of the weeks claimed, or a total of \$920 in benefits.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ that claimant was overpaid \$920 in regular benefits and should be assessed \$230 in monetary penalties and a 7 week penalty disqualification period.

Under ORS 657.150(1), only “unemployed” individuals are eligible for benefits. ORS 657.150(1). An individual is not “unemployed,” and, therefore, ineligible for benefits, in any week in which his earnings exceed his weekly benefit amount. *See* ORS 657.100(1). A claimant is responsible for furnishing the Department with the information required for correctly processing the claim, including “current work activity and earnings.” OAR 471-030-0025 (December 16, 1985). The information required may include the amount of time devoted to the work activity and the gross amount of remuneration or wages, including tips, received or expected to be received. *Id.*; OAR 471-030-0017 (1)(c) (July 12, 2007).

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.*

Claimant did not dispute the Department’s evidence that she failed to report any work hours or earnings when filing her claims for each of the weeks at issue despite earning more than her weekly benefit amount of \$184 during each of those weeks. On the basis of her false reports, the Department paid claimant \$184 in benefits for each of the weeks at issue. As the result of claimant’s failure to disclose the material facts referred to above, the Department paid her \$920 in regular benefits she was not entitled to receive. Therefore, she must repay that amount.

ORS 657.215 provides that an individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. In addition, an individual who has been disqualified for benefits under ORS 657.215, is also liable for a penalty at a rate of at least 15 but not greater than 30 percent of the amount of the overpayment. ORS 657.310(2).

At hearing, claimant asserted that she made her false reports about hours and earnings when filing her claims based on “confusion” after being told by an unnamed Department employee to “keep claiming” after she disclosed her low wage employment. Audio Record ~ 11:00 to 13:00. However, claimant did not assert that she was advised by the Department employee to falsely respond to the Department’s questions about work hours and earnings did not assert that she was confused by the plain language of the questions asked and in fact admitted that her false reports that she had not worked any hours during the weeks claimed were “wrong on my part.” Audio Record ~ 11:00 to 13:00. Moreover, her assertion that she had never before filed a claim for benefits when employed was contradicted by the Department’s undisputed evidence that in 2012 she filed a claim for benefits in which she reported wages earned during the weeks claimed. Audio Record ~ 14:00 to 14:30. On this record, claimant was not credible, was experienced at filing claims for benefits when employed and, more likely than not, willfully failed to report material facts, her hours and earnings, in order to obtain benefits.

Claimant's willful misrepresentations subject her to a penalty disqualification from future benefits in accordance with OAR 471-030-0052(1)(a). Under that provision, the number of penalty weeks imposed is the result reached by dividing the total overpayment by the maximum Oregon weekly benefit amount, rounded to two decimal places, multiplying the result by four and rounding the result up to the nearest whole number. Under that calculation, \$920 (claimant's total overpayment) ÷ \$538 (maximum Oregon weekly benefit amount) = 1.71 x 4 = 6.84, rounded up to the nearest whole number = 7. Claimant's penalty disqualification period is 7 weeks.

Under ORS 657.310(2), an individual who has been disqualified from benefits under ORS 657.215 for making a willful misrepresentation is liable for a monetary penalty in an amount equal to between 15 and 30 percent of the overpayment amount depending on the number of incidents that occurred. OAR 471-030-0052(7). Claimant had five occurrences of misrepresentation. Under OAR 471-030-0052(7)(c), claimant is liable for the 25% monetary penalty. The total of the Department assessed federal and state penalties (\$230) divided by the amount of claimant's overpayment (\$920) equals 25% of the overpayment, is consistent with ORS 657.310(2) and appropriate under the circumstances.

Claimant is required to repay, by deduction from future benefits or otherwise, \$920 to the Department. Claimant is also subject to monetary penalties of \$230 and 7 penalty weeks.

DECISION: Hearing Decision 14-UI-16306 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: June 19, 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 court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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