

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0826

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On May 17, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for Emergency Unemployment Compensation (EUC) benefits for the period January 6 through January 19 and February 3 through April 20, 2013 (weeks 02-13 through 03-13 and 06-13 through 16-13) (decision # 90259). On June 6, 2013, decision #90259 became final without an appeal having been filed. On March 19, 2014, the Department served notice of an administrative decision (decision # 142614) assessing a \$2,863 overpayment in EUC benefits based on decision # 90259. Claimant filed a timely request for hearing on decision # 142614. On April 21, 2014, ALJ Seideman conducted a hearing, and on April 24, 2014, issued Hearing Decision 14-UI-15985, affirming decision # 142614. On May 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 2, 2009, claimant filed an initial claim for unemployment insurance benefits (BYE 11-10) that had a weekly benefit amount of \$226. He exhausted regular benefits and for the weeks January 6 through January 19 and February 3 through April 20, 2013 (weeks 02-13 through 03-13 and 06-13 through 16-13), filed claims for and received Emergency Unemployment Compensation (EUC) benefits on the claim in the total amount of \$2,863.

(2) The decision issued by the Department on May 17, 2013 (decision # 90259), found that EUC benefits were only available to claimant if he was “not monetarily eligible for other unemployment benefits” and that claimant “may have [had] sufficient employment to qualify for benefits in California. As a result, the decision concluded that claimant was not eligible for EUC benefits on Oregon claim BYE 11-10.

(3) On March 19, 2014, the Department issued the decision now being appealed by claimant (decision # 142614), concluding that because decision # 90259 “created [an] overpayment” and became final, claimant was required to repay the Department the overpayment amount of \$2,863.

CONCLUSIONS AND REASONS: Claimant was paid \$2,863 in EUC benefits to which he was not entitled, the amount of which he must repay or have withheld from future benefits payable, unless the Department waives recovery.

On June 30, 2008, Federal Public Law 110-252, the Supplemental Appropriations Act of 2008 (Act) was signed into law. Title IV, Sec. 4001 of the Act, authorizes states to make payments of emergency unemployment compensation to individuals who qualify under the requirements specified in Sec. 4001 and Sec. 4002. Qualified individuals must have exhausted all rights to regular compensation under state or federal law and have no rights to regular compensation under such law with respect to a week at issue. Here, claimant did not qualify for EUC benefits because he had not exhausted his rights to regular compensation in California for the weeks in question. However, through no fault of his own, he received \$2,863 in EUC benefits for which he was not qualified for the weeks January 6 through January 19 and February 3 through April 20, 2013.

Federal law also mandates states to require repayment from individuals who have been overpaid EUC benefits unless the state elects to waive recovery.¹ Title IV (Emergency Unemployment Compensation), §4005 (b), and Unemployment Insurance Program Letter (UIPL) No. 23-08, issued July 9, 2008, Attachment A.² Federal law allows state agencies to recover the overpayment from any compensation payable to the individual under any state unemployment compensation law administered by the state agency.³ A claimant must repay these benefits even if the overpayment was not the fault of the claimant, and was not caused by claimant's fraudulent actions.

Here, based on decision # 90259, which became final without an appeal being filed,⁴ claimant has been overpaid EUC benefits in the amount \$2,863. He must either repay those benefits to the Department or have all or portions thereof deducted from future benefits, unless the state elects to waive recovery.

DECISION: Hearing Decision 14-UI-15985 is affirmed.

¹ Under Title IV §4005 (b), overpayments may be waived only upon a determination that the overpayment was "without fault on the part of the [payee]" and "repayment would be contrary to equity and good conscience." *Id.*

² The Employment and Training Administration of the U.S. Department of Labor interprets federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State Unemployment Compensation program. 62 Fed. Reg. 60, 104 (November 6, 1997). These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the Oregon Employment Department and other state employment security agencies. *Id.* The UIPLs are published in the Federal Register in order to inform the public. *Id.* The interpretation of a statute issued by the administrative agency responsible for administering it is persuasive, although not binding, authority, assuming the interpretation is not clearly wrong. See *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993) and *Springfield Education Assn v. School Dist*, 290 Or 217, 621 P2d 547 (1980).

³ Title IV, Sec. 4005 (c) (1) of the Supplemental Appropriations Act of 2008.

⁴ At the April 21, 2014 hearing, claimant asserted he never received decision # 90259. Audio Record ~ 18:00 to 24:00. Department records show that on May 1, 2014, claimant filed a late appeal of that decision. If claimant prevails on his late appeal, this decision may need to be revisited.

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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