

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1007

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On January 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible to receive Emergency Unemployment Compensation (EUC) benefits during the weeks of September 29, 2013 through November 2, 2013 and November 17, 2013 through December 14, 2013 (decision # 100244). On January 23, 2014, decision # 100244 became final without a request for hearing having been filed. On May 5, 2014, the Department served notice of an administrative decision assessing a \$973 overpayment of EUC benefits based on decision # 100244 (decision # 113143). Claimant filed a timely request for hearing. On June 5, 2014, ALJ M. Davis conducted a hearing, and on June 6, 2014, issued Hearing Decision 14-UI-19194, affirming decision # 113143. On June 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 5, 2013, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's claim was valid with a weekly benefit amount of \$122.

(2) Claimant claimed benefits during the weeks of September 29, 2013 through November 2, 2013, (weeks 40-13 through 44-13) and November 17, 2013 through December 14, 2013 (weeks 47-13 through 50-13), the weeks at issue. During the weeks at issue, the Department paid claimant \$(73 in EUC benefits.

(3) Sometime before January 3, 2014, the Department determined that claimant was eligible for an alternate base year unemployment insurance claim starting on September 29, 2013, and had not been eligible to receive EUC benefits during the weeks at issue. Claimant did nothing that caused or contributed to him receiving EUC benefits during the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was overpaid \$973 in benefits during the weeks at issue and is liable to have this amount deducted from any future benefits otherwise payable to him within five years following the week in which the decision establishing the erroneous payment became final.

Public Law 110-252, §4005(b) states that an individual who was overpaid EUC benefits is liable to repay those benefits in accordance with state law. ORS 657.315(1) states that an individual who has been paid benefits to which the individual was not entitled because of an error not due to providing a false statement or making a misrepresentation or not disclosing facts, is liable to have the amount of the overpayment deducted from any future benefits otherwise payable to the individual under ORS Chapter 657 for any week within five years following the week in which the decision establishing the erroneous payment became final.

Because claimant did not request a hearing on decision # 100244 and it became final on January 23, 2014, it is established as a matter of law that claimant was not eligible to receive EUC benefits during the weeks at issue and any EUC benefits that he received during those weeks were, as a matter of law, overpaid. Although claimant did nothing to cause himself to erroneously receive \$973 in EUC benefits, he nevertheless was not entitled to receive those benefits and must account for them to the Department. However, ORS 657.315 limits the Department's collection efforts to deducting this \$973 overpayment from any future unemployment benefits otherwise payable to claimant within five years following the week in which the decision establishing the erroneous payment became final. Although the Department's witness stated at hearing that the period in which the Department might make deductions from future benefits to collect the overpaid amount was three years, she was incorrect and the statute clearly allows the Department to deduct the overpayment from future benefits for five years. Audio at ~11:46.

Claimant was paid \$973 in benefits to which he was not entitled, and is liable to have this amount deducted from future benefits payable to him within five years following the weeks in which the decision establishing the erroneous payment became final.

DECISION: Hearing Decision 14-UI-19194 is affirmed.

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

DATE of Service: July 17, 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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