

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1249

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On June 4, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$2,919.00 overpayment, a \$437.85 monetary penalty and 28 penalty weeks (Decision # 195151). On June 24, 2013, the Oregon Employment Department (the Department) served notice of an amended administrative decision cancelling decision # 195151 and assessing a \$433 overpayment, a \$64.95 monetary penalty and 8 penalty weeks (Decision # 200657). Claimant filed a timely request for hearing. On July 1, 2014, ALJ M. Davis conducted a hearing, and on July 2, 2014, issued Hearing Decisions 14-UI-20717, modifying decision # 200657 to eliminate the monetary penalty and penalty weeks. On July 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party filed an application for review of the portion of Hearing Decision 14-UI-20717 concluding that the Department failed to show that claimant willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits and that claimant was subject to penalty weeks and a monetary penalty. We therefore confined this decision to the issue of whether claimant received regular benefits in the amount of \$433 she was not entitled to receive and must repay to the Department under ORS 657.310.

FINDINGS OF FACT: (1) On April 9, 2012, claimant filed an initial claim for unemployment insurance benefits that had a weekly benefit amount of \$132.

(2) Claimant claimed and received regular benefits for weeks in 2012 from October 21 through November 3 and November 25 through December 1 and for weeks in 2013 from January 6 through January 12, 2013 and January 27 through February 2, 2013 (weeks 43-12, 44-12 and 48-12, 02-13 and 05-13). These are the weeks at issue.

(3) K & D Services of Oregon employed claimant as a certified flagger during the weeks at issue. During weeks 43-12, 44-12, 48-12, 02-13 and 05-13, claimant had actual earnings in the amount of \$137.70, \$280.50, \$357.00, \$178.50 and \$113.85, respectively. When claiming benefits for those

weeks, claimant reported earnings of \$80.00, \$120.00, \$130.00, \$112.20 and \$112.20, respectively. Based on claimant's incorrect earnings reports, claimant was overpaid regular benefits for those weeks in the total amount of \$433. Exhibit 1.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant was paid \$433 in regular benefits she was not entitled to receive and is liable to repay or have deducted from future benefits otherwise payable to her.

As a preliminary matter, 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 her (or his) earnings exceed her 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). An eligible individual who has employment in any week claimed shall have her weekly benefit amount reduced by the amount of earnings paid or payable that exceeds the greater of ten times the Oregon minimum hourly wage or one-third of her weekly benefit amount. ORS 657.150(1).

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.*

In Hearing Decision 14-UI-20717, after finding, based on the Department's calculations and exhibits, that claimant underreported her earnings during the weeks at issue, the ALJ concluded claimant received \$433 in benefits she was not entitled to receive. Hearing Decision 14-UI-20717 at 3. We agree that claimant underreported her weekly earnings for the weeks at issue. Claimant admitted as much when she testified that her paystubs "match what the Employer reported" for those weeks. Transcript at 16. We also agree that the Department correctly calculated the total amount of the overpayment. Accordingly, we agree with the ALJ that claimant was overpaid benefits for the weeks at issue in the total amount of \$433 which claimant is liable to either repay or have deducted from any future benefits otherwise payable to her.

DECISION: Hearing Decision 14-UI-20717 is affirmed.

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

DATE of Service: September 3, 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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