

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1265

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On August 19, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was ineligible for Emergency Unemployment Compensation (EUC) benefits because he was eligible for regular unemployment benefits in California (decision # 75313). On September 8, 2013, decision # 75313 became final without a request for hearing having been filed.

On January 27, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 195337), assessing a \$12,074 overpayment, \$1,811.10 in monetary penalties, and 52 penalty weeks based on decision # 75313. On February 18, 2014, decision # 195337 became final without a request for hearing having been filed. On May 13, 2014, claimant filed an untimely request for hearing. On May 15, 2014, ALJ Kangas issued Hearing Decision 14-UI-17690, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.¹ On May 27, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On June 18, 2014, OAH issued a letter entitled, "Cancellation of Hearing Decision." On July 1, 2014, ALJ S. Lee conducted a hearing at which claimant appeared and testified, and on July 8, 2014 issued Hearing Decision 14-UI-21088, allowing claimant's request for late appeal, assessing an overpayment of \$12,074, but concluding that he did not willfully make a misrepresentation or fail to disclose a material fact to obtain benefits. On July 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument in reaching this decision to the extent it was based on the hearing record.

No adversely affected party applied for review of those portions of Hearing Decision 14-UI-21088 allowing claimant's late request for hearing and concluding claimant was not subject to penalty weeks or

¹ Hearing Decision 14-UI-17690.

liable for a monetary penalty. We therefore confine our review of Hearing Decision 14-UI-21088 to the issue of whether claimant is liable for an overpayment.

FINDINGS OF FACT: (1) On August 13, 2012, claimant filed a valid initial claim for unemployment insurance benefits with a weekly benefit amount of \$524.

(2) On February 19, 2013, when claimant requested an Emergency Unemployment Compensation (EUC) extension of his claim, the Department's information showed claimant had wages in California. Claimant told the Department he did not have wages in California. On February 26, 2013, the Department told claimant to file a new claim in California, and to inform the Department if he did not qualify for benefits there.

(3) On March 13, 2013, the State of California denied claimant benefits. Claimant forwarded the denial letter to the Department. On April 6, 2013, the Department received the denial letter and filed an EUC extension for claimant.

(4) Claimant claimed benefits in Oregon and California for the weeks from February 10, 2013 to August 3, 2013 (week 7-13 through 31-13). The Department paid claimant \$524 per week for week 7-13 through 13-13, and due to the federal sequestration, the reduced amount of \$467 per week for weeks 14-13 through 31-13, for a total of \$12,074 in EUC benefits.

(5) At some time during the summer of 2013, the State of California granted claimant's claim for benefits and paid him benefits for week 7-13 through 31-13.

CONCLUSIONS AND REASONS: The Department overpaid claimant \$12,074 in EUC benefits to which he was not entitled and is liable to repay.

On June 30, 2008, Federal Public Law 110-252, the Supplemental Appropriations Act of 2008 (Act) was enacted. Title IV, Sec. 4001 of the Act, authorizes states to make payments of EUC to individuals who qualify under the requirements specified in Sec. 4001 and Sec. 4002. To qualify for EUC benefits, an individual must have exhausted all rights to regular benefits under state and federal law for each week at issue.

Federal law also mandates states to require repayment from individuals who have been overpaid EUC benefits unless the state elects to waive recovery. Title IV (EUC), §4005 (b), and Unemployment Insurance Program Letter (UIPL) No. 23-08, issued July 9, 2008, Attachment A. Federal law allows state agencies to recover the overpayment from any benefits payable to the individual under any state unemployment compensation law administered by the state agency. Title IV, Sec. 4005(c)(1) of the Supplemental Appropriations Act of 2008. 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, claimant did not qualify for EUC benefits because he qualified for regular benefits in California for the weeks at issue. Regardless of his knowledge or intent, claimant received \$12,074 in EUC benefits for which he was not qualified for weeks 7-13 through 31-13. Claimant received benefits because he reported to the Department that his claim in California had been denied. Because his claim was subsequently granted, and he did not inform the Department that he received benefits for the weeks

at issue, claimant was overpaid EUC benefits in the amount of \$12,074. Even if claimant was not at fault in causing the overpayment, he must either repay those benefits to the Department or have all or portions thereof deducted from future benefits. See ORS 657.315(1).

DECISION: Hearing Decision 14-UI-21088 is affirmed.

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

DATE of Service: August 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 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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