

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1680

Affirmed
Overpayment Assessed
(Se impuso sobrepago)

PROCEDURAL HISTORY: On March 16, 2011, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for Meduri Farms Inc. without good cause during the week of October 25 through 31, 2009 (week 43-09) (decision # 144936). On April 5, 2011, decision # 144936 became final without a request for hearing having been filed. On September 2, 2014, the Department served notice of two administrative decisions (decisions # 120335 and # 121319) concluding that claimant was overpaid a total of \$8,113 in regular and Federal Additional Compensation (FAC) benefits for the weeks from November 1, 2009 through June 26, 2010 (weeks 44-09 through 25-10). On September 16, 2014, claimant filed a late request for hearing on decision # 144936, and timely requests for hearing on decisions # 120335 and # 121319. On October 14, 2014, ALJ R. Davis conducted hearings, and on October 16, 2014 issued Hearing Decision 14-UI-27025, dismissing claimant's late request for hearing on decision # 144936, and Hearing decisions 14-UI-27072 and 14-UI-27069, affirming decisions # 120335 and # 121319. On October 20, 2014, claimant filed applications for review of Hearing Decisions 14-UI-27025, 14-UI-27072 and 14-UI-27069 with the Employment Appeals Board (EAB). On December 3, 2014 EAB issued Appeals Board Decision 2014-EAB-1691, affirming Hearing Decision 14-UI-27025.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-27072 and 14-UI-27069. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-1680 and 2014-EAB-1690).

EVIDENTIARY MATTER: At the ALJ's request, and with no objection from claimant, the Department offered documents into evidence after the hearing, which the ALJ marked as Exhibit 2, but did not receive into evidence.¹ We receive Exhibit 2 into evidence as necessary to complete the record, pursuant to OAR 471-041-0090(1) (October 29, 2006). Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within

¹ See Transcript at 12; Exhibit 2; Hearing Decisions 14-UI-27072 and 14-UI-27069 at 1.

ten days of our mailing this decision. Unless such objection is received and sustained, Exhibit 2 will remain in the record.

FINDINGS OF FACT: (1) On October 10, 2008, claimant filed an initial claim for benefits. His weekly benefit amount was \$242. On January 4, 2010, claimant filed another initial claim for benefits. His weekly benefit amount was \$115.

(2) Before claiming benefits for weeks 44-09 through 25-10 (November 1, 2009 through June 26, 2010), claimant reported to the Department that Meduri Farms Inc. laid him off for lack of work. The Department paid claimant \$8,113 in regular and FAC benefits for weeks 44-09 through 25-10.

(3) Claimant did not perform service in employment for which remuneration was received during weeks 44-09 through 25-10.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid \$8,113 in regular and FAC benefits that he is liable to repay or have deducted from any future benefits otherwise payable to him under ORS chapter 657.

ORS 657.176(2)(c) provides that an individual who quit work without good cause is disqualified from the receipt of benefits until the individual has performed service in employment for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which quit occurred. 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 received regular and FAC benefits after week 43-09 because he reported to the Department that Meduri Farms Inc. laid him off for lack of work. However, decision # 144936 concluded that that claimant quit working for Meduri Farms Inc. without good cause during week 43-09, and the decision became final on April 5, 2011 without a request for hearing having been filed. Hearing Decision 14-UI-27025 dismissed claimant's late request for hearing on decision # 144936, and Appeals Board Decision 2014-EAB-1691 affirmed Hearing Decision 14-UI-27025. Thus, regardless of claimant's knowledge or intent, his report to the Department that Meduri Farms Inc. laid him off for lack of work was false as a matter of law. Claimant did not perform service in employment for which remuneration was received during weeks 44-09 through 25-10, and therefore did not requalify for benefits under ORS 657.176(2)(c). He therefore is liable to repay the \$8,113 in regular and FAC benefits he received for weeks 44-09 through 25-10, or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

DECISION: Hearing Decisions 14-UI-27072 and 14-UI-27069 are affirmed. *Decisiones de la Audiencia 14-UI-27072 y 14-UI-27069 queda confirmada.*

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

DATE of Service: December 5, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros, (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en court.oregon.gov. En este sitio web, haga clic en “Help” para acceso a información en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.