

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1801

Reversed
No Overpayment Assessed

PROCEDURAL HISTORY: On August 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that because claimant had unreported work and earnings for the week of February 2 through February 8, 2014 (week 06-14), she was overpaid benefits in the amount of \$462. The decision also assessed a monetary penalty of \$69.15 and four penalty weeks. Claimant filed a timely request for hearing. On November 3, 2014, ALJ Lohr conducted a hearing in which the employer did not participate, and on November 5, 2014, issued Hearing Decision 14-UI-28192, affirming the administrative decision. On November 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

With her written argument, claimant submitted new information that was not part of the hearing record, and failed to show that circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On January 3, 2014, claimant filed an initial claim for benefits. Her weekly benefit amount was \$462.

(2) When she claimed benefits for the week of February 2 through February 8, 2014 (week 06-14), claimant reported to the Department that she had not worked and had no earnings during that week. The Department paid claimant \$462 in benefits for week 06-14.

(3) On February 10, 2014, claimant began work as an adjunct faculty member in the Linfield College School of Nursing for the spring 2014 semester. Claimant received a salary of \$15,016 for the term, which was paid in equal installments on the 29th of each month, beginning in February and ending in May 2014. (Exhibit 2).

(4) On June 30, 2014, the Department received a benefits earnings audit in which the Linfield College payroll manager certified that claimant worked 25 hours during the week of February 2 through 8, 2014, and was paid \$938.50 for her work.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant was not overpaid unemployment insurance benefits for the week of February 2 through 8, 2014 (week 06-14), and did not make a material misrepresentation of fact to the Department.

Under ORS 657.100(6), an individual is not entitled to receive unemployment insurance benefits for any week in which the individual receives remuneration for services equal to or greater than the individual's weekly benefit amount. The ALJ concluded that claimant was not entitled to receive benefits for the week of February 2 through 8, 2014 (week 06-14) because she earned \$938.50 during that week, an amount greater than her weekly benefit amount of \$462. We disagree.

The only evidence in the record that claimant worked during week 06-14 was a benefit earnings audit provided by the Linfield College payroll manager, which showed that claimant was paid \$938.50 for 25 hours of work during that week. Claimant testified that this information was inaccurate because her work as an adjunct faculty member for Linfield College began on the day the spring semester started – February 10, 2014. Claimant submitted the Linfield College academic calendar to corroborate her testimony regarding the date on which the spring semester began. (Exhibit 2). We find the first hand testimony of the claimant under oath more persuasive than the employer's hearsay evidence, and conclude that the claimant did not work and had no earnings during the week of February 2 through 8, 2014. Accordingly, claimant was not overpaid benefits for this week.¹

The ALJ, however, concluded that the academic calendar established that claimant worked during the week at issue. According to the ALJ, the calendar showed that Linfield College held a mandatory orientation the week before each term began, and that "more likely than not claimant attended a mandatory orientation the week prior to spring term and received earnings for that period." Hearing Decision 14-UI- 28192 at 4. In addition, the ALJ concluded that the calendar showed that grades for the winter term were due on February 7, 2014, "suggesting that more likely than not claimant was paid for winter term through the week ending February 8, 2014." *Id.* The ALJ's conclusions are entirely speculative. There is no evidence in the record to show that a week before the spring term began, claimant participated in an event identified as a "new student orientation" on the Linfield College academic calendar. Nor is there any evidence that claimant worked for the college during the winter term.

Because we have concluded that claimant did not work and had no earnings during week 06-14, we also conclude that she did not make any material misrepresentation in violation of ORS 657.215² when she

¹ It is probable that the payroll manager determined that claimant earned \$938.50 for week 06-14 by prorating claimant's salary for the spring term. For the purposes of ORS 657.100, however, earnings cannot be allocated on a pro rata basis when, as here, the dates of an individual's service are clearly established. OAR 471-030-0017(3)(d) (July 12, 2007).

² ORS 657.215 provides, in relevant part, that "[a]n individual is disqualified for benefits for a period not to exceed 52 weeks whenever the Director of the Employment Department finds that the individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits under this chapter."

reported to the Department that she had no work or earnings for that week. Claimant is, therefore, not subject to disqualification.

DECISION: Hearing Decision 14-UI-28192 is set aside, as outlined above.

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

DATE of Service: December 31, 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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