

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0179**

*Affirmed*  
*Penalty Weeks Assessed*

**PROCEDURAL HISTORY:** On October 22, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144450). Claimant filed a timely request for hearing. On November 5, 2014, ALJ Siedeman conducted a hearing, and on November 6, 2014 issued Hearing Decision 14-UI-28279, reversing the Department's decision. On December 30, 2014, the Department issued notice of an administrative decision concluding that claimant made willful misrepresentations to obtain benefits and assessed four penalty weeks. Claimant filed a timely request for hearing. On January 30, 2014, ALJ Murdock conducted a hearing, and on February 2, 2015 issued Hearing Decision 15-UI-32762, affirming the Department's misrepresentation decision. On February 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) On September 3, 2014, Erickson Air-Crain Incorporated discharged claimant for work performance. On that day, the employer gave to claimant and claimant signed a notice stating that he was discharged for failing to comply with certain of its policies. Exhibit 1 at 27-30. On that same date, the employer mailed a letter to claimant stating that he was discharged as of September 3, 2014 for failing to comply with the employer's policies and not meeting performance expectations. Exhibit 1 at 32.

(2) Also on approximately September 3, 2014, the employer presented a severance agreement and release to claimant for him to sign. Exhibit 1 at 10-13. As consideration for claimant's signature to the agreement, the employer agreed make a severance payment to claimant of two weeks' wages and in section 9 of the agreement agreed not to contest claimant's eligibility for unemployment benefits and to respond to any inquiry by the Department about the work separation by stating that claimant's "position

was eliminated due to a business restructuring." Exhibit 1 at 10, 12. Claimant did not sign the severance agreement and did not agree to its terms.

(3) On September 8, 2014, claimant filed an initial claim for unemployment insurance benefits. When claimant made his application for benefits, he represented that his work separation from the employer resulted from a "lay off/lack of work." Exhibit 1 at 54; Audio at ~8:07. On this application, claimant certified that his answers were true and correct to the best of his knowledge.

(4) Sometime after September 8, 2014, the employer responded to the Department's inquiries about claimant's work separation by stating that claimant had been discharged for violations of policy and that he had not been laid off due to lack of work or because his position had been eliminated.

(5) On September 29, 2014, a representative from the Department contacted claimant about the cause of his work separation. Claimant told the representative that, although the employer had indicated before he was discharged that he had failed to comply with its policies, the paperwork the employer had provided to him stated that he was discharged because his position was eliminated as part of a business restructuring. Exhibit 1 at 6.

(6) On October 30, 2014, claimant responded to a questionnaire that the Department mailed to him seeking further information about the reason that he initially represented that his work separation was the result of a layoff rather than a discharge. Claimant stated that he had initially answered that the work separation was the result of a layoff because the severance agreement, which he did not sign, stated that it was and he did not think at the time that the agreement was not effective unless he agreed to its terms.

**CONCLUSIONS AND REASONS:** Claimant made willful misrepresentations in order to obtain benefits. Even though no overpayment resulted from his misrepresentation, claimant is liable to disqualification for four weeks of future benefits otherwise payable to him.

ORS 657.215 states that an individual is disqualified from future benefits for a period not to exceed 52 weeks if the individual willfully made a false statement or misrepresentation to obtain benefits, and the length of the disqualification period shall be determined pursuant to the Department's regulations. OAR 471-030-0052(1)(b) (February 23, 2014) states that if an individual is disqualified from future benefits due to a willful misrepresentation about, among other things, the nature of the work separation, the number of weeks of disqualification shall be based on an arithmetic formula or four weeks whichever is greater.

At hearing, claimant conceded that he knew he was making a misrepresentation to the Department when he stated that the work separation was the result of a layoff or lack of work, and he knew that the employer had discharged him for allege policy violations on September 3, 2014. Audio at ~15:00, 15:10. Claimant also conceded that he was aware when he made his false representation to the Department that penalties could be imposed based on it. Audio at ~ 18:24. Claimant justified his false statement about the work separation by stating that he did not consider that he had not signed the severance agreement and made its provisions effective so that, when he filed his claim, he had wanted to report his work separation "in harmony" with what he thought the employer was going to report. Audio at ~15:10, ~17:35. In essence, claimant's contention is that he should not be disqualified for his dishonesty because he thought that the employer was also going provide similarly dishonest information

to the Department. However, it is no defense to a charge of willful dishonesty that claimant might have thought that the employer was going to collude with him in the dishonesty. As the term "willfully" is used in ORS 657.215, it reasonably means to make a false representation purposefully, intentionally, deliberately and consciously with knowledge that it was false when it was made. By this definition, claimant's dishonest representation was clearly "willful" within the meaning of ORS 657.215, despite claimant's repeated contentions that he had not intended to "deceive" the Department and that his aim was solely to avoid a possible conflict between what he reported and what the employer reported about the work separation. Audio at ~15:10, ~17:35. Moreover, that claimant made the false representation about the work separation in his application for benefits, gives rise to the strong inference that he likely did so in order to ensure that he obtained unemployment benefits. While claimant's entitlement to benefits, and the elimination of any liability for an overpayment was upheld in Hearing Decision 14-UI-28279, which concluded that, although the employer had discharged him, it had done so for reasons that were not misconduct, this decision does not operate to excuse claimant's willful misrepresentation to the Department about the nature of his work separation. Since claimant was not assessed an overpayment, the arithmetic formula in OAR 471-030-0052(1)(a) is not applicable to determine the length of his penalty disqualification, and the default period of four weeks must be used under OAR 471-030-0052(1)(b).

Claimant made willful misrepresentations to obtain benefits. The length of time from which claimant is disqualified from receiving future benefits is four weeks.

**DECISION:** Hearing Decision 15-UI-32762 is affirmed.

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

**DATE of Service:** April 6, 2015

**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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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