

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0188

Modified
Overpayment, No Penalties

PROCEDURAL HISTORY: On September 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was ineligible to receive Trade Readjustment Allowances (TRA) for the period March 30, 2014 through July 5, 2014 (decision # 160344). Claimant filed a timely request for hearing. On September 17, 2014, the Office of Administrative Hearings (OAH) issued a notice of hearing scheduled for October 1, 2014. On October 2, 2014, ALJ Clink issued Hearing Decision 14-UI-26280 dismissing claimant's request for hearing for failure to appear at the October 1, 2014 hearing. On October 22, 2014, Hearing Decision 14-UI-26280 became final without an application for review having been filed.

On December 3, 2014, the Department served notice of an administrative decision assessing a \$4,279 overpayment, \$1,283.70 monetary penalty, and 33 penalty weeks (decision # 194643). Claimant filed a timely request for hearing. On January 29, 2015 and February 17, 2015, ALJ Murdock conducted a hearing. Ronald Smith appeared as an interpreter for claimant at the hearing. On February 23, 2015, the ALJ issued Hearing Decision 15-UI-33874, affirming the Department's decision # 194643. On March 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 12, 2012, claimant established a valid claim under the Trade Readjustment Act (TRA) with a weekly benefit amount of \$389.

(2) Claimant claimed benefits for the period March 30 through May 31, 2014 (weeks 14-14 through 22-14), June 8 through June 14, 2014 (week 24-14), and June 22 through July 5, 2014 (weeks 26-14 through 27-14), the weeks at issue. The Department initially paid claimant benefits for those weeks.

(3) During the weeks at issue, claimant was enrolled in a TRA approved training program, attended some scheduled classes, and took final exams. When completing the Department's weekly TRA benefit request forms, claimant indicated that he attended all scheduled classes during weeks 14-14 through 22-14. Claimant indicated that he did not attend classes during week 25-14 because none were scheduled that week. Claimant indicated that he attended all scheduled classes during weeks 26-14 and 27-14.

Relying on claimant's responses, the Department paid him \$389 for each of the weeks at issue except week 27-14, for which the Department paid claimant no benefits.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid \$4,279 in benefits that he is liable to repay or have deducted from any future benefits. However, we disagree with the ALJ and conclude that claimant did not willfully make a false statement or misrepresentation, or willfully fail to report a material fact to obtain benefits. Claimant therefore is not liable for a monetary penalty or penalty weeks.

20 CFR 617.18(b)(1)(i) provides that state law shall not be applied to disqualify an individual from receiving TRA because the individual is participating in an approved training program. However, an individual who, without justifiable cause, ceases to participate in approved training shall not be eligible for TRA for the week in which such cessation occurred, or any succeeding week thereafter, until the week in which the individual resumes participation in an approved training program. 20 CFR 617.18(b)(2)(i). A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause. 20 CFR 617.18(b)(2)(ii)(B).

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.* An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). The Department had the burden of proof on those issues. *Accord Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

During the weeks at issue, claimant was enrolled in a TRA-approved training program. When completing the Department's weekly TRA benefit request forms, claimant indicated that he attended all scheduled classes during the weeks at issue. However, administrative decision # 160344 concluded that claimant was ineligible for TRA during the weeks at issue because he was not participating in the approved training program during those weeks. Hearing Decision 14-UI-26280 dismissed claimant's request for hearing on decision # 160344 and became final on October 22, 2014 without an application for review having been filed. Thus, as a matter of law, claimant was not participating in the approved program during the weeks at issue, and his representations to the contrary were false as a matter of law. Based on those misrepresentations, claimant received \$4,279 in benefits to which he was not entitled. Regardless of claimant's knowledge or intent, he is liable to either repay the \$4,279 or have it deducted from any future benefits otherwise payable to him under ORS chapter 657.

In Hearing Decision 15-UI-33874, the ALJ also concluded that claimant was disqualified from future benefits for 33 weeks and liable for a monetary penalty because he willfully failed to disclose that he

had missed classes during the weeks at issue to obtain benefits.¹ The ALJ reasoned that claimant understood and willfully failed to correctly answer the question, “Did you attend all scheduled classes during the week?” for each week at issue because he answered that question correctly when he claimed week 25-14 by reporting that he did not attend classes during a school break because none were scheduled.² At hearing, however, claimant testified that he did not understand that the Department expected him to report when he missed classes while his approved training program was in session. Transcript at 8-9. Claimant’s assertion is plausible, given his limited English skills, remained enrolled in the training program, and attended classes and took final exams during the weeks at issue. The assertion is consistent with claimant’s report to the Department during the week of his program’s Spring break, a week during which his training program was not in session, that he did not attend classes that week. The record does not show, more likely than not, that claimant understood the Department’s question referred to his class attendance rather than whether his program was in session. On this record, then, the evidence whether claimant willfully failed to disclose material facts to obtain benefits during the weeks at issue is no more than equally balanced. Consequently, the Department failed to meet its burden of proof to show that claimant had the requisite intent to mislead the Department to obtain benefits that is required to support misrepresentation penalties in this case. Accordingly, while we agree with the ALJ that claimant was overpaid and must repay \$4,279 to the Department, we conclude that claimant is not subject to disqualification or monetary penalties.

DECISION: Hearing Decision 15-UI-33874 is modified, as outlined above.

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

DATE of Service: April 24, 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. 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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¹ *Id.* at 4-5.

² Hearing Decision 15-UI-33874 at 4.