

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0199

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On January 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$1,174 and assessing a nine week disqualification of nine weeks and a monetary penalty of \$234.80 (decision # 194458). Claimant filed a timely request for hearing. On February 9, 2015, ALJ Seideman conducted a hearing and issued Hearing Decision 15-UI-33185, affirming the Department's decision. On February 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 5, 2014, claimant filed an initial claim for benefits. His weekly benefit amount was \$538, which was also the maximum weekly benefit amount. Claimant filed weekly claims for benefits for the period July 6, 2014 through July 26, 2014 (weeks 28-14 through 30-14), the weeks at issue.

(2) On July 8, 2014, claimant began working for the employer, and continued working for the employer during the weeks at issue. During week 28-14, claimant worked 24 hours and earned \$276.92. During weeks 29-14 through 30-14, claimant worked 40 hours and earned \$646.15 each week. Claimant understood that his earnings affected his weekly benefit amount. Exhibit 1.

(3) When filing his weekly claims for benefits for the weeks at issue, claimant reported he worked no hours and had no earnings each week. The Department therefore paid claimant \$1,174 in benefits for the weeks at issue.

(4) Claimant did not want to interrupt his receipt of unemployment benefits when he began working for the employer until he knew if his new job would continue. Once he knew the work would continue, he called the Department to correct his earnings, but was unwilling to continue to hold on the telephone for more than 45 minutes to speak with a Department representative. He did not try again to contact the Department to correct his earnings. Claimant assumed the Department would contact him to repay the benefits.

CONCLUSIONS AND REASONS: Claimant had earnings which affected his weekly benefit amount, was overpaid \$1,174 in benefits that he must repay, is disqualified for nine weeks of future benefits, and is subject to a \$234.80 monetary penalty.

An individual is not “unemployed,” and therefore not eligible for benefits, for any week in which the remuneration paid or payable to the individual for services performed during the week is greater than the individual’s weekly benefit amount. *See* ORS 657.100(1), ORS 657.150(6), ORS 657.155(1)(f). An eligible unemployed individual’s weekly benefit amount is subject to reduction by the amount of earnings paid or payable that exceeds the greater of ten times the minimum hourly wage, or one-third the individual’s weekly benefit amount. ORS 657.150(6). 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 percent, but not greater than 30 percent, of the amount of the overpayment. ORS 657.310(2).

The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052 (February 23, 2014). When the disqualification is imposed because the individual failed to accurately report earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number. OAR 471-030-0052(1)(a). For the third or fourth occurrence within 5 years of the occurrence for which a penalty is being assessed, the monetary penalty will be 20 percent of the total amount of benefits the individual received but to which the individual was not entitled. OAR 471-030-0052(7)(b).

Overpayment. In the present case, claimant earned \$276.92 during week 28-14, but reported that he had no earnings that week. Under ORS 657.150(6), claimant’s weekly benefit amount is subject to reduction by the portion of \$276.92 that exceeds one-third his weekly benefit amount. Claimant therefore was entitled to \$440 in benefits for week 28-14, and was overpaid \$98 in benefits for that week. Claimant earned more than his \$538 weekly benefit amount during each of weeks 29-14 and 30-14. He was thus not unemployed, is not eligible for benefits during either of those weeks, and was overpaid \$538 for each of weeks 29-14 and 30-14. Claimant was therefore overpaid \$1,174 in benefits for the weeks at issue. Regardless of claimant’s knowledge or intent, he is liable to either repay the benefits or have the \$1,174 deducted from any future benefits otherwise payable to him under ORS chapter 657.

Misrepresentation. At hearing, claimant asserted that he did not willfully fail to report his hours and earnings to obtain benefits. However, claimant knowingly reported that he worked no hours and had no earnings because he wanted to continue to receive benefits until he was certain his work for the

employer would continue. Moreover, claimant knew he reported inaccurate information and received benefits to which he was not entitled, but chose not to correct his earnings with the Department. Although claimant called the Department to report his earnings, he never spoke to a Department representative because he was unwilling to wait on hold for up to 45 minutes. Thus, we find that claimant willfully underreported his earnings during the weeks at issue to obtain benefits. Claimant therefore is disqualified for benefits under ORS 657.215, and is liable for a monetary penalty under ORS 657.310(2).

Disqualification and Penalty Weeks. Under OAR 471-030-0052(1)(a), the number of weeks of disqualification is determined by dividing the total amount of benefits overpaid claimant for the disqualifying acts (\$1,174), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying acts (\$538), rounding off to the nearest two decimal places (2.18), multiplying the result by four (8.72) and rounding it up to the nearest whole number (9). Claimant therefore is disqualified for 9 weeks of future benefits. Because claimant willfully underreported his earnings three times in three weeks, the monetary penalty is 20 percent of the total amount of benefits he received but to which he was not entitled (\$1,174). *See* OAR 471-030-0052(7)(b). Claimant therefore is liable for a \$234.80 monetary penalty.

DECISION: Hearing Decision 15-UI-33185 is affirmed.

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

DATE of Service: April 10, 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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