

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0426

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with Spirit Mountain Gaming, Inc. on April 10, 2014 (decision # 113938). Claimant did not file a request for hearing on decision # 113938 and it became final on October 22, 2014. On December 30, 2014, the Department served notice of an administrative decision concluding claimant voluntarily left work with Wal-Mart on August 22, 2014 (decision # 81320). Claimant did not file a request for hearing on decision # 81320 and it became final on January 20, 2014. On December 31, 2014, the Department served notice of an administrative decision assessing a \$1,764 overpayment, a \$352.80 penalty and 14 penalty weeks based on decisions # 113938 and # 81320. The overpayment decision stated that to be timely a timely request for hearing needed to be filed on or before January 20, 2015. On February 9, 2015, claimant filed an untimely request for hearing on the overpayment decision. On March 19, 2015, ALJ S. Lee conducted a hearing at which neither employer appeared, and on March 27, 2015 issued Hearing Decision 15-UI-35926, allowing claimant's late request for hearing and modifying the Department's decision to assess only an overpayment of \$1,764 and no penalties. On April 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In her written arguments submitted on April 15, 2015 and May 6, 2015, claimant raised several points in support of her contention that administrative decisions #113938 and # 81320 were wrongly decided. However, the merits of those decisions are not before us because claimant did not file requests for hearing on them and no hearing decisions have been issued. For these reasons, claimant's written arguments are not relevant to the matter at hand and EAB has not considered them when reaching this decision.

Because no adversely affected party sought review of those parts of Hearing Decision 15-UI-35926 that allowed claimant's late request for hearing and determined that penalties were not appropriately assessed against claimant, EAB has confined its review to the issue of whether claimant was overpaid benefits.

FINDINGS OF FACT: (1) On October 22, 2013, claimant filed an initial claim for benefits. That claim was determined valid with a weekly benefit amount of \$126. Thereafter, claimant claimed benefits for certain benefit weeks. Claimant temporarily stopped claiming benefits after the week ending the April 5, 2014 (week 14-14).

(2) On April 8 through April 10, 2014 (during week 15-14), claimant worked for Spirit Mountain Gaming, Inc. Claimant voluntarily left that work. On April 24, 2014, claimant reopened her claim. When claimant reopened her claim, she represented to the Department that she had not worked or quit a job since she last claimed benefits during benefit week 14-14. The reopened claim was effective beginning the week of April 20 through April 26, 2014 (week 17-14). Claimant claimed and was paid benefits for the weeks of April 20 through May 31, 2014 (weeks 17-14 through 22-14), the earliest of the weeks at issue. The total benefits claimant received for those weeks was \$745. Claimant stopped claiming benefits for some weeks after benefit week 22-14.

(3) Effective the week of July 27 through August 2, 2014 (week 31-14), claimant restarted her claim. Claimant claimed and was paid benefits for the weeks of July 27 through September 20, 2014 (weeks 31-14 through 38-14), some of the weeks at issue. On August 22, 2014 (during week 34-14), claimant worked for Wal-Mart and was paid \$45.84. When claimant claimed benefits for week 34-14, claimant represented that she had not quit a job during that week and did not have any earnings. The total benefits that claimant received for benefit weeks 31-14 through 38-14 was \$1,008.

CONCLUSIONS AND REASONS: Claimant was overpaid \$1,764 in benefits for the weeks of April 20, 2014 through May 31, 2014 and July 27, 2014 through September 20, 2014. Claimant is liable to repay those benefits to the Department or to have them deducted from any future benefits otherwise payable to her.

ORS 657.310(1) states that an individual who receives any benefits to which the individual is not entitled because the individual made a false statement or representation of a material fact or failed to disclose a material fact, regardless of the individual's knowledge or intent, is liable to repay those benefits to the Department or to have the amount of the overpaid benefits deducted from any future benefits otherwise payable to the individual.

Claimant did not dispute that she was paid \$1,764 in benefits during the weeks at issue. Administrative decisions # 11398 and # 81320 have both become final, and establish as a matter of law that claimant voluntarily left work without good cause on April 10, 2014 and August 22, 2014. As a result of the nature of these work separations, claimant was not eligible to receive benefits beginning benefit week 17-14 and continuing through benefit week 38-14. *See* ORS 657.155(1); ORS 657.176(2)(a). Although claimant may not have known that her failure to disclose her work with Spirit Mountain or Wal-Mart was material to her eligibility for benefits, or might have thought that she was justified in leaving those jobs, she still received benefits to which she was not entitled after those work separations. Claimant is

liable to repay those overpaid benefits under ORS 657.310(1) since her knowledge or intent in failing to disclose information about those jobs is not relevant to assessing an overpayment.

Claimant attempted to present evidence at the hearing and in her two written arguments to show that the circumstances under which she left work with Spirit Mountain and Wal-Mart were not disqualifying work separations and did not render her ineligible to receive benefits during the weeks at issue. However, claimant was precluded from using the hearing on the overpayment issue as a vehicle to collaterally attack the separate administrative decisions concluding that those work separations were disqualifying because those decisions are now final decisions. If claimant wishes to contest those underlying decisions, the proper approach is to seek to have hearings on one or both of them and, as appropriate, filing applications for review of the hearing decisions after they are issued.

Claimant was overpaid \$1,764 in benefits for benefit weeks 17-14 through 22-14 (April 20 through May 31, 2014) and 31-14 through 38-14 (July 27 through September 20, 2014). Claimant is liable to repay those benefits or to have them deducted from any future benefits otherwise payable to her.

DECISION: Hearing Decision 15-UI-35926 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: June 9, 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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