

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0782

Affirmed
Disqualification
Overpayment and Penalties

PROCEDURAL HISTORY: On April 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work at R & R Medical Billing Service, LLC (decision # 84510). On April 24, 2015, the Department served notice of another administrative decision assessing a \$14,274 overpayment, \$2,141.10 monetary penalty and 52 penalty weeks based on decision # 84510 (decision # 194902). Claimant filed a timely request for hearing on both decisions. On June 5, 2015, ALJ Murdock conducted two hearings, and on June 11, 2015 issued Hearing Decision 15-UI-39882, affirming decision # 84510, and Hearing Decision 15-UI-39942, affirming decision # 194902. On June 30, 2015, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-29882 and 15-UI-39942. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 15-EAB-0782 and 15-EAB-0785).

In her written argument, claimant argued that the ALJ erred by excluding the documents she offered into evidence, which included notes from claimant's interview with the employer and two medical notes. However, claimant testified to the contents of the documents during the hearing, so the fact that claimant was referred by the employer to a coworker if she needed help and had short-term memory problems are both in the record. The ALJ's decision to exclude the documents themselves as unduly repetitious was not an error, and, even if it was, given that the evidence contained in the documents is already in the record by reason of claimant's testimony, the error would be harmless.

We considered claimant's remaining arguments when reaching this decision.

FINDINGS OF FACT: (1) R & R Medical Billing Services, LLC employed claimant as a medical biller from July 21, 2014 to July 25, 2014. Claimant was in training throughout her employment.

(2) When the employer identified an error by a trainee, the employer returned the error to the trainee with written corrections and required the trainee to correct the error. The employer's owner expected trainees to approach her with any questions if she was available, but instructed them to ask Nicole questions if the owner was not available.

(3) On July 25, 2014, the owner handed claimant a task and asked if claimant had any questions. Claimant said she did not, and resumed working on something else. The owner walked back to her own desk and sat down, at which time she heard claimant ask Nicole about the task the owner had just handed to her. The owner believed claimant was questioning the owner's instruction, and felt that claimant was disrespecting her in front of the other staff.

(4) The owner and her husband called claimant into a meeting to discuss claimant's conduct. Claimant felt that the owner's accusation that claimant had disrespected the owner in front of staff was belittling. Claimant felt that the owner berated her, threatened claimant's job if she did not correctly perform a task, bullied her and intimidated her throughout the meeting, and felt that was a continuation of the owner's behavior throughout the four days of her employment.

(5) Claimant quit work on July 25, 2014 because of the way she perceived the owner had treated her. She felt that her employment with R & R Medical Billing, LLC had been a traumatic experience.

(6) On August 8, 2014, claimant filed an initial claim for unemployment insurance benefits. Claimant's weekly benefit, and the maximum weekly benefit amount in effect at the time, was \$549.

(7) When claimant filed her initial claim for benefits, she was expected to provide the Department with the past 18 months of her employment history. Claimant reported employment she had left in June 2014, but did not report her employment with, or work separation from, R & R Medical Billing, LLC.

(8) The Department investigated claimant's work separation from the employment she had left in June 2014 and extensively questioned claimant about it. Claimant understood that a work separation could affect her qualification for benefits.

(9) The Department's April 23, 2015 decision # 84510 disqualified claimant from benefits because of her work separation from R & R Medical Billing, LLC. The Department's decision was affirmed by Hearing Decision 15-UI-39882, issued June 11, 2015, and by this consolidated Employment Appeals Board decision. Based on those decisions, claimant was not eligible for benefits based on that work separation.

(10) Claimant claimed benefits from week 32-14 to week 05-15. The Department paid benefits to claimant each week based on the information claimant had provided about her employment history and the payments totaled \$14,274. Had claimant reported her work separation from R & R Medical Billing, LLC, the Department would have investigated the work separation to determine whether it was disqualifying before paying benefits to claimant.

CONCLUSIONS AND REASONS: We agree with the ALJ, and conclude that claimant voluntarily left work without good cause and is liable for an overpayment and penalties.

Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant quit work based upon her perception that the employer’s owner berated, bullied, intimidated and belittled her, and repeatedly threatened her with discharge when she made errors. However, the owner testified that she did not treat claimant that way, and, with respect to claimant’s complaint that the owner orally threatened her with discharge when she made errors, the owner testified that the owner identified errors for claimant in writing, which, if true, would make claimant’s testimony about being threatened implausible. In a quit case, claimant has the burden to prove that, more likely than not, the conditions she alleged caused her to quit work existed, and were so grave that no reasonable and prudent person would have continued to work for the employer. Absent a reason to disbelieve the employer, the evidence about what occurred between claimant and the owner is no better than equally balanced, and claimant has failed to prove that she had good cause to quit. We therefore conclude that claimant quit work without good cause, and is subject to disqualification from unemployment insurance benefits.

Overpayment and Penalties. 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.*

Because claimant quit work without good cause, she is subject to disqualification from unemployment insurance benefits under ORS 657.176, and was not entitled to receive any of the \$14,274 in benefits she received based on her claims between week 32-14 and week 05-14. She received those benefits based on her failure to report her work separation from R & R Medical Billing, LLC, which was material to her qualification to receive benefits. Regardless of her knowledge or intent in failing to report that material fact, claimant was overpaid benefits and is liable to repay them to the Department.

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. An individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is also 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).

Claimant alleged at the hearing that she failed to report her work separation from R & R Medical Billing, LLC because she forgot she held that job. Audio recording at ~15:20. Claimant further testified that she has medically diagnosed short-term memory problems, so her failure to report her employment was not willful. Audio recording at ~20:22. The record supports claimant’s assertion about her

memory. However, on this record it is implausible that claimant's memory problems caused her to withhold information about her work separation to the Department. Claimant filed her initial claim only two weeks after her work separation, and R & R Medical Billing, LLC was the first job she held in Alaska and the last job she had before filing her initial claim. Claimant described her employment as having been traumatic, and testified that she was capable of remembering traumatic occasions. *Compare* 10:45 a.m. hearing, Audio recording at ~15:25; 24:26. Claimant testified that her memory problems caused her to forget everyday things, such as the content of conversations that occurred an hour ago, but that while she would forget some of the contents or details of her conversations, she would remember having had the conversation itself. *Compare* 10:45 a.m. hearing, Audio recording at ~21:00 to ~21:30; ~22:02. Finally, although claimant testified that the reason she could testify about her work separation from R & R Medical Billing, LLC was that her family reminded her about her job based on her daily complaints about that work between July 21, 2014 and July 25, 2014, the hearing record shows that claimant participated in a hearing about her work separation, testified that she recalled specific details about her employment with R & R Medical Billing, LLC, her training there, her interaction with others while at that job, and how she felt at various times during her employment. *Compare* 10:45 a.m. hearing, Audio recording at ~24:10; 9:30 a.m. hearing, Audio recording at ~12:50. It is implausible that claimant's testimony, for example, about her recollections of events or recollection about the way she felt after the last conversation she had with the owner before quitting work, were based solely on information she got from her family after being reminded that she had held that job in the course of claiming unemployment insurance benefits.

For those reasons, it is implausible that claimant forgot about her job at R & R Medical Billing, LLC, and more likely than not that claimant was aware that she had held that job, and withheld that information when she claimed benefits. Because claimant knew that a work separation could affect her qualification for benefits, and in the absence of evidence of any other reason for withholding that information, we infer that the reason claimant withheld information about a potentially disqualifying work separation for the purpose of obtaining benefits. We conclude that claimant's misrepresentation was willful, and she is liable for penalties as a result.

The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052. The monetary penalty is calculated based on how many misrepresentation occurrences occurred, and an occurrence is counted each time the individual willfully fails to report a material fact to obtain benefits. OAR 471-030-0052(7). A monetary penalty totaling 15 percent of the overpayment must be assessed for the first occurrence. OAR 471-030-0052(7)(a).

Only one misrepresentation occurred on this record, when claimant failed to report her work separation. Therefore, she is liable for a 15 percent penalty. 15 percent of \$14,274 equals \$2,141.10. Therefore, claimant is liable for a \$2,141.10 monetary penalty.

The disqualification period is the greater of four weeks or the result reached by dividing the total overpayment by the maximum weekly benefit amount in effect at the time of the first effective week of the initial claim, rounding off to the nearest two decimal places if necessary, and multiplying the result by four, then rounding up to the nearest whole number if necessary. OAR 471-030-0052(1).

Claimant's overpayment was \$14,274, divided by \$549, the maximum benefit amount in effect at the time of her initial claim, equals 26, multiplied by four equals 104 weeks. However, under ORS 657.215,

the number of penalty weeks assessed in any case cannot exceed 52 weeks, so claimant's penalty weeks are reduced from 104 weeks to 52 weeks.

In sum, claimant was overpaid \$14,274, is liable for a \$2,141.10 monetary penalty, and is liable to serve 52 penalty weeks.

DECISION: Hearing Decisions 15-UI-39882 and 15-UI-39942 are affirmed.

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

DATE of Service: August 11, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.