

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0794-R

*EAB Decision 2015-EAB-0794 Adhered to on Reconsideration
Overpayment Assessed*

PROCEDURAL HISTORY: On April 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left a job without good cause and denying benefits. That decision became final without a request for hearing having been filed. On May 8, 2015, the Department served notice of an administrative decision (#195348) assessing a \$896 overpayment, \$134.40 monetary penalty and 7 penalty weeks. Claimant filed a timely request for hearing on decision #195348. On June 17, 2015, ALJ Holmes-Swanson conducted a hearing, and on June 18, 2015 issued Hearing Decision 15-UI-50230, assessing an \$896 overpayment but no penalties. On June 30, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On July 10, 2015, EAB issued Appeals Board Decision 2015-EAB-0794, affirming Hearing Decision 2015-EAB-0794. On July 23, 2015, claimant submitted a written argument to EAB. In accordance with the authority granted EAB by ORS 657.290(3), EAB will grant reconsideration to consider the issue raised in claimant's argument.

FINDING OF FACT: When claimant filed his initial claim for benefits on January 31, 2015, claimant reported that Platinum Exteriors laid him off due to lack of work. Based on this representation, the Department concluded claimant was eligible to receive unemployment benefits and paid him a total of \$896 in benefits for weeks 06-15 through 13-15 (February 15 through April 4, 2015).

CONCLUSION AND REASONS: Claimant was overpaid and is liable to either repay the Department or have the amount of the overpayment deducted from future benefits otherwise payable.

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.*

Claimant received \$896 in benefits for weeks 06-15 through 13-15 because he represented to the Department that Platinum Exteriors laid him off. In his argument to EAB, claimant contended that this representation was truthful because Platinum Exteriors told him they had no work for him. The work separation to which claimant refers, however, was addressed in the April 9, 2015 administrative decision which concluded that claimant voluntarily left work with Platinum Exteriors without good cause. That decision became final when claimant failed to request a hearing. The representation that claimant made to the Department when he applied for unemployment benefits – that he was laid off – was therefore false as a matter of law. Claimant received \$896 in benefits to which he was not entitled because he misrepresented a material fact. Regardless of claimant’s knowledge or intent, he is liable to repay the \$896 or have that amount deducted from future benefits.

For the reasons explained above, EAB made no mistake of fact or law when it affirmed the ALJ’s conclusion that claimant was overpaid benefits in the amount of \$896 in unemployment benefits. We therefore adhere to the conclusion we reached in Appeals Board Decision 2015-EAB-0794.

DECISION: On reconsideration, Hearing Decision 15-UI-40230 is affirmed.

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

DATE of Service: July 28, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

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