

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0809**

*Modified*  
*Overpayment Not Assessed*

**PROCEDURAL HISTORY:** On May 28, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (# 193559) assessing a \$954 overpayment, eight penalty weeks and a monetary penalty of \$143.10. Claimant filed a timely request for hearing. On July 1, 2015, ALJ S. Lee conducted a hearing, and on issued Hearing Decision 15-UI-41393, modifying the administrative decision to assess a \$173 overpayment, and assessing no penalty weeks or monetary penalty. On July 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On March 21, 2013, claimant filed a claim for unemployment benefits. A weekly benefit amount of \$173 was established.

(2) Claimant claimed and was paid \$173 in unemployment benefits for each of the following weeks: week 14-13 (March 31 through April 6, 2013), week 27-13 (June 30 through July 6, 2013), and week 30-13 (July 21 through July 27, 2013).

(3) On April 4, 2014, claimant filed a claim for unemployment benefits. A weekly benefit amount of \$435 was established.

(4) Claimant claimed and was paid \$435 in unemployment benefits for week 44-14 (October 26 through November 1, 2014).

(5) Claimant performed no work for S. L. Tile Roofing during any of the weeks at issue. Exhibit 2.

**CONCLUSION AND REASONS:** Claimant was not overpaid benefits, and did not willfully make a false statement or misrepresentation or willfully fail to report a material fact to obtain benefits.

An individual who willfully makes a false statement or misrepresentation, or willfully fails to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. The Department has the burden to demonstrate that a claimant violated ORS 657.215. *Pruett v. Employment Division*, 86 Or App 516, 740 P2d 196 (1987).

Here, claimant testified that he performed no work for the S. L. Tile Roofing, the employer, during any of the weeks at issue. Transcript at 15. The employer also provided time records that corroborated claimant's testimony. Exhibit 2. The Department never rebutted this evidence. We therefore conclude that the Department failed to meet its burden to demonstrate that claimant failed to accurately report his earnings in order to obtain unemployment benefits and is not subject to any penalties. Claimant is subject to no monetary penalty or disqualification from future benefits.

Because claimant performed no work for the employer during the weeks at issue, he was "unemployed" and entitled to receive benefits because he did not receive remuneration for services performed during these weeks that was greater than the weekly benefit amount. *See* ORS 657.100(1), ORS 657.150(6), ORS 657.155(1)(f). ORS 657.150(6). He was thus not overpaid any benefits which he must repay to the Department, or have deducted from future benefits.

**DECISION:** Hearing Decision 15-UI-41393 is modified, as outlined above.

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

**DATE of Service:** August 5, 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](http://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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