

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0817

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On April 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$27,023 overpayment, an \$8,106.90 monetary penalty and 52 penalty weeks (decision # 200653). Claimant filed a timely request for hearing. On June 17, 2015, ALJ Meerdink conducted a hearing, and on June 18, 2015, issued Hearing Decision 15-UI-40267, affirming the Department's decision. On July 7, 2015, claimant filed an application for review of with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Home Care Workers, a Medicaid funded program, employed claimant as a caregiver from October 1, 2004 through September 27, 2014.

(2) On February 23, 2012, claimant filed an initial claim for unemployment insurance benefits that had a weekly benefit amount of \$204 (BYE 07-13). The maximum weekly benefit amount in effect at the time of the claim was \$482. On February 20, 2013, claimant filed another initial claim for unemployment insurance benefits (BYE 07-14). On March 20, 2014, claimant filed another initial claim for unemployment insurance benefits (BYE 10-15).

(3) Claimant claimed and was paid benefits for weeks in 2012 from February 19 through September 22, 2012, and October 28 through December 29, 2012 (weeks 08-12 through 38-12, and 44-12 through 52-12). He claimed and was paid benefits for weeks in 2013 from December 30, 2012 through December 28, 2013 (weeks 01-13 through 52-13). He claimed and was paid benefits for weeks in 2014 from March 23 through September 27, 2014 (weeks 13-14 through 39-14). These are the weeks at issue.

(4) In February 2015, the Department conducted an investigation regarding the above claims. During its investigation, it received hours and earnings information from the employer for the weeks at issue. The Department determined that claimant failed to accurately report his earnings for those weeks and obtained benefits to which he was not entitled. When the investigations unit contacted claimant about the results of its investigation, he confirmed that he had received the earnings reported by the employer, and underreported his earnings to the Department. Exhibit 1.

(5) When filing his claims for benefits for the weeks at issue, claimant reported hours and earnings for the weeks claimed that were less than his actual hours and earnings and certified that his reports were accurate. After filing his claims, claimant never contacted to Department to correct his earlier inaccurate hours and earnings reports. Claimant knew that his hours and earnings reports were not accurate when he filed his benefit claims or shortly thereafter when he received his earnings. His false reports of his hours and earnings were deliberate and made to obtain benefits. As a result of claimant's failure to report all the hours he worked and earnings he received on more than one hundred different occurrences, claimant received \$27,023 in regular and Emergency Unemployment Compensation (EUC) benefits to which he was not entitled.

CONCLUSIONS AND REASONS: Claimant was overpaid and must repay to the Department \$27,023 in regular and EUC benefits, is liable for an \$8,106.90 monetary penalty, and as an additional penalty, is disqualified from receiving future benefits for a period of 52 weeks.

As a preliminary matter, only "unemployed" individuals are eligible for benefits. ORS 657.150(1). An individual is not "unemployed," and, therefore, is ineligible for benefits, in any week in which the individual's earnings exceed his or her weekly benefit amount. *See* ORS 657.100(1). A claimant is responsible for furnishing the Department with the information required for correctly processing the claim, including "current work activity and earnings." OAR 471-030-0025 (December 16, 1985). The information required may include the amount of time devoted to the work activity and the gross amount of remuneration or wages, including tips received or expected to be received. *Id.*; OAR 471-030-0017 (1)(c) (July 12, 2007). Remuneration for services provided to an employer shall be allocated to the week in which the services were performed. OAR 471-030-0017(3). An eligible individual who has employment in any week claimed shall have his or her weekly benefit amount reduced by the amount of earnings paid or payable that exceeds the greater of ten times the Oregon minimum hourly wage or one-third of his or her weekly benefit amount. ORS 657.150(1).

Here, because the Department originally paid claimant benefits it subsequently denied, the Department had the burden to establish that claimant received benefits to which he was not entitled, and that he willfully made false statements or misrepresentations to obtain those benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department met its burden.

Overpayment. 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.*

On February 18, 2015, claimant completed a written questionnaire entitled, "Prosecution Interview" in the North Portland Work Source Office. Exhibit 1. Claimant admitted on that questionnaire that he agreed with the Department's Schedule of Adjustments showing the weeks claimed, and that he underreported his hours and earnings for each of those weeks. Exhibit 1. Claimant's reports to the Department when filing his benefit claims were false and caused him to receive \$27,023 in regular and EUC benefits to which he was not entitled. Regardless of claimant's knowledge or intent, he is liable

under ORS 657.310(1) to either repay the \$27,023 in regular and EUC benefits received, or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

Misrepresentation and Penalties. An individual who willfully makes a false statement or misrepresentation, or willfully fails to report a material fact to obtain benefits, may be disqualified from benefits for a period not to exceed 52 weeks. ORS 657.215. The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052 (February 23, 2014). In addition, an individual who has been disqualified from benefits under ORS 657.215 for making a willful misrepresentation, and who has seven or more “occurrences” within five years, is liable for a penalty in an amount equal to 30 percent of the total amount of benefits the individual received but was not entitled to receive. ORS 657.310(2); OAR 471-030-0052(7). An occurrence shall be counted each time an individual willfully makes a false statement or representation, or willfully fails to report a material fact to obtain benefits. OAR 471-030-0052(7).

In the written questionnaire entitled, “Prosecution Interview,” claimant admitted that he agreed with the Department’s benefit report showing the weeks claimed, that he personally claimed the benefits for each week shown, that he reviewed his weekly claim reports before submitting them, and that he failed to correctly report the hours he worked and his earnings for each week. Exhibit 1. When asked the question, “Your employer shows that you worked and earned more than what you reported, did you know that you were reporting less than what you made?”, claimant responded, “I know that I reported less than what I earned for the weeks on the schedule of adjustments.” *Id.* Claimant also admitted on the questionnaire that he “was aware” the information he provided to the Department was false. *Id.* At hearing, claimant first asserted that when he submitted his weekly claims online showing false information regarding his hours and earnings, he “just miscalculated,” but later admitted that he reported his earnings as he did because he “wanted to keep his benefits.” Transcript at 16-18. By responding to the questionnaire and testifying as he did, claimant admitted that he willfully failed to report material facts, his actual weekly hours and earnings, in order to obtain benefits.

When the disqualifying acts under ORS 657.215 relate to a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in OAR 471-030-0052(1)(a). That section provides that the number of penalty weeks is calculated by dividing the total overpayment (\$27,023) 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 (\$482), rounding to the nearest two decimal places (56.06), multiplying the result by four (224.24), and rounding the result up to the nearest whole number (225). Because the disqualification period may not exceed 52 weeks under ORS 657.215, claimant’s disqualification period is 52 weeks. Claimant is also liable for a monetary penalty equal to 30 percent of the overpaid benefits because each time he knowingly underreported his hours worked or generated earnings during the weeks at issue, at least 117 times, he made a false statement to the Department that counted as an “occurrence” for purposes of determining the penalty percentage for which he is liable. Because claimant had seven or more occurrences within five years, he is liable for a penalty of 30 percent of the total overpayment amount. Thirty percent of \$27,023 is \$8,106.90, making claimant’s total repayment liability \$35,129.90

In sum, claimant was overpaid and must repay the Department \$27,023 in regular and EUC benefits, is liable for an \$8,106.90 monetary penalty, and is disqualified from receiving future benefits for 52 weeks.

DECISION: Hearing Decision 15-UI-40267 is affirmed.

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

DATE of Service: August 19, 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.