State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1008-R

Hearing Decisions 15-UI-43081 and 15-UI-43090 Reconsidered
Reduced Overpayment and Penalties

PROCEDURAL HISTORY: On July 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 154741). On July 16, 2015, the Department served notice of an administrative decision concluding that claimant was overpaid $12,078 and liable for a $2,415.60 monetary penalty and 52 penalty weeks. Claimant filed timely requests for hearing. On August 13, 2015, ALJ R. Frank conducted a hearing, and on August 17, 2015 issued Hearing Decisions 15-UI-43081, affirming decision # 154741, and 15-UI-43090, affirming decision # 194673. On August 21, 2015, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB). EAB consolidated review, and, on September 8, 2015, issued Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009, reversing decision # 154741 and concluding claimant left work with good cause, and reducing the overpayment and penalties. On October 8, 2015, Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009 became final. On November 10, 2015, the Department filed a request for reconsideration. This decision is issued pursuant to the authority granted to EAB under ORS 657.290(3).

CONCLUSIONS AND REASONS: On reconsideration, Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009 are modified. Claimant is liable for a $549 overpayment, 8 penalty weeks and a $109.80 monetary penalty.

ORS 657.290(3) provides that EAB may, "upon its own motion or upon application of any party in interest," and "irrespective of whether it has become final," reconsider any previous decision. The Department requested reconsideration in these matters to correct an error of material fact and the conclusions EAB drew from those facts. OAR 471-041-0145(1) (October 29, 2006).[1]

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[1] OAR 471-041-0145(2) provides that requests for reconsideration filed by parties more than 20 days after the decision sought to be reconsidered is mailed are subject to dismissal. In this case, the Department's request for reconsideration was filed late, and, therefore, must be dismissed. However, because the Department's request identified an error of material fact that must be corrected, EAB will exercise its discretion under ORS 657.290(3) to reconsider this matter on its own motion.

In Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009, EAB concluded that claimant's earnings exceeded her weekly benefit amount and she "was overpaid $549 for week 4-15."[2] However, the record shows that claimant was not paid benefits for week 4-15 because that week was her waiting week. Therefore, although claimant was not eligible to receive any benefits or waiting week credit for that week, she was not overpaid that week. EAB's conclusion that she was overpaid $549 for that week was incorrect.

In Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009, EAB correctly concluded that week 5-15 was compensable for claimant but incorrectly concluded that claimant was eligible for a partial payment of benefits.[3] The record shows, however, that although the Department initially paid claimant $549 in benefits, week 5-15 should have been designated as claimant's waiting week, and no benefits were payable. Therefore, EAB's conclusion that claimant was overpaid $321 for week 5-15 was incorrect. Claimant was actually overpaid $549 for week 5-15.

Because claimant's total overpayment for weeks 4-15 and 5-15 was $549, rather than the $870 calculated in Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009, the penalties calculated based on the total overpayment amount must be further reduced. In this case, claimant's overpayment was $549, divided by $549 equals 1, multiplied by 4 equals 4, plus four weeks for the misrepresentation related to ORS 657.176, making claimant's total penalty 8 weeks.[4] In addition, claimant's 20% monetary penalty, assessed on her correct overpayment amount of $549, totals $109.80.

In conclusion, claimant's total overpayment is reduced to $549, and her penalties reduced to 8 weeks and $109.80. In all other respects, EAB adheres to Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009 on reconsideration.

DECISION: On reconsideration, Hearing Decisions 15-UI-43081 and 15-UI-43090 are modified, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: <u>November 24, 2015</u>

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

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[2] Appeals Board Decisions 2015-EAB-1008 and 2015-EAB-1009 at 4.

[3] *Id.*

[4] OAR 471-030-0052(1) provides that the length of a penalty disqualification related to work and earnings is established by dividing the total overpayment by the maximum benefit amount, rounding the result to two decimal places, multiplying it by four, then rounding the result up to the nearest whole number. When the disqualification is also related to the provisions of ORS 657.176 (work separations), four weeks must be added to the calculation.

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