

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0298**

*Affirmed*  
*Overpayment and Penalties*

**PROCEDURAL HISTORY:** On February 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$23,998 overpayment, \$7,199.40 monetary penalty and 52 penalty weeks (decision # 193672). Claimant filed a timely request for hearing. On March 9, 2016, ALJ Menegat conducted a hearing, and on March 10, 2016 issued Hearing Decision 16-UI-54806, affirming the Department's decision. On March 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On August 31, 2010, claimant filed an initial claim for benefits (this claim was designated by the Department as Benefit Year Ending (BYE) 33-11). His weekly benefit amount was \$322. The maximum weekly benefit amount in effect at the time was \$496.

(2) On August 22, 2012, claimant filed a second initial claim for unemployment insurance benefits (BYE 33-13). His weekly benefit amount was \$243. The maximum weekly benefit amount in effect at the time was \$524. He claimed and was paid regular benefits for weeks 50-12 to 10-13.

(3) Claimant claimed and was paid EUC benefits under his BYE 33-11 claim for weeks 11-13 to 12-13. Claimant claimed and was paid EUC benefits under his BYE 33-13 claim for weeks 13-13 to 33-13.

(4) On August 27, 2013, claimant filed a third initial claim for benefits (BYE 33-14). His weekly benefit amount was \$276. The maximum weekly benefit amount in effect at the time was \$538. He claimed and was paid regular benefits for weeks 47-13 to 10-14.

(5) On August 19, 2014, claimant filed a fourth initial claim for benefits (BYE 32-15). His weekly benefit amount was \$291. The maximum weekly benefit amount in effect at the time was \$549. He claimed and was paid regular benefits for weeks 35-14 to 9-15.

(6) On August 19, 2015, claimant filed a fifth initial claim for benefits (BYE 32-16). His weekly benefit amount was \$312. The maximum weekly benefit amount in effect at the time was \$557. He claimed and was paid regular benefits for weeks 34-15 to 50-15.

(7) Claimant claimed a total of 97 weeks. Claimant worked for Conagra Foods Lamb Weston, Inc. during each of those weeks. In 93 of the weeks at issue, claimant had earnings that exceeded his weekly benefit amount and was not eligible for any benefits. Claimant did not report his actual earnings to the Department. He reported that he had no earnings in week 28-13, and earned between \$99.27 and \$109.36 each of the other 92 weeks.

(8) During weeks 52-12, 27-13, 28-13, and 52-13, claimant had reduced earnings and was, respectively, entitled to receive \$129, \$102, \$203 and \$161 in benefits. He underreported his earnings in each of those four weeks and received more than he was entitled to receive.

(9) During the 97 weeks at issue, the Department paid claimant a total of \$24,593 based on his false reports about his earnings. He was entitled to receive only \$595 in reduced benefits for weeks 52-12, 27-13, 28-13, and 52-13. He was not entitled to receive any benefits during the remaining 93 weeks. His total overpayment was \$23,998.

(10) Claimant intentionally underreported his earnings in each of the 97 weeks at issue in order to claim unemployment benefits he was not entitled to receive because his wages from Conagra Foods Lamb Weston, Inc. were being garnished, he had five different creditors seeking repayment for his debts, and he needed additional money to pay his bills to avoid losing his house and car. Claimant also thought his wife would leave him. Claimant knew when he filed the weekly claims at issue that it was wrong to claim benefits to which he was not entitled. Audio recording at ~25:35.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was overpaid \$23,998, and is liable for a \$7,199.40 monetary penalty and 52 penalty weeks.

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 \$23,998 in unemployment insurance benefits he was not eligible to receive because he underreported his weekly earnings from his work at Conagra Foods Lamb Weston, Inc. when claiming benefits over a 97-week period. Claimant earned more than his weekly benefit amount 93 times, and, in four other weeks, was eligible only for a reduced benefit amount. Because claimant underreported his earnings each time he reported, however, he was overpaid by the Department in each of the 97 weeks he claimed. Because the overpayment was the result of claimant's false statements to the Department, he is liable to repay the benefits.

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.

Claimant willfully underreported his earnings with the intent of receiving benefits to which he was not entitled. Claimant's wages were garnished, and he had additional creditors seeking repayment of his debts. Claimant feared that he could lose his house and vehicle, and feared his wife might leave, if he did not have enough money to pay his bills despite his garnishment and debts, so he intentionally made false reports to the Department about his earnings in order to receive money from the Department. Claimant knew it was wrong to do so, and chose to do it anyway. Claimant is liable for misrepresentation penalties.

The length of the penalty disqualification period applicable for failure to accurately report earnings is determined by dividing the total amount of benefits overpaid to claimant for the disqualifying acts by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time, rounding off to the nearest two decimal places, multiplying the result by four, and rounding it up to the nearest whole number. OAR 471-030-0052(1)(a) (February 23, 2014).

Claimant's total overpayment was \$23,998. The maximum weekly benefit amount in effect during the first effective week of the initial claim in effect at the time was \$524.<sup>1</sup>  $\$23,998 \div \$524 = 45.79 \times 4 = 184$  weeks. However, the 184 week penalty reached under the calculation must be reduced to 52 weeks, which is the maximum penalty allowed under state law.

In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is 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). The penalty percentage is based upon the number of occurrences of misrepresentation that occurred. An "occurrence" is defined as each time the individual willfully makes a false statement or representation. OAR 471-030-0052(7). For the seventh or greater occurrence within 5 years of the occurrence for which a penalty is being assessed, the penalty is equal to 30 percent of the total amount of overpaid benefits. OAR 471-030-0052(7)(d).

The first willful misrepresentation occurrence occurred when claimant claimed benefits for week 50-12 in December 2012. There were 96 additional occurrences within 5 years of that occurrence. Therefore, claimant is liable for a 30% monetary penalty. 30% of \$23,998 is \$7,199.40.

In sum, claimant was overpaid \$23,998 over a 97-week period because he willfully misrepresented his earnings to receive benefits. He is liable to repay the \$23,998 overpayment and \$7,199.40 monetary penalty to the Department, and is also liable for 52 penalty weeks disqualification period.

**DECISION:** Hearing Decision 16-UI-54806 is affirmed.

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<sup>1</sup> Although there are five benefit years at issue, we have calculated the penalty weeks using the maximum benefit amount in effect at the time of the first misrepresentation occurrence in December 2012, which is also the calculation most beneficial to claimant. The result of the calculation would remain the same regardless which maximum benefit amount or combination of amounts we used because each result would exceed the maximum 52-week penalty disqualification period allowed under state law.

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

**DATE of Service: April 12, 2016**

**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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