

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1144

Affirmed
Overpayment, No Penalties
(Sobrepago, no Sanciones)

PROCEDURAL HISTORY: On May 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73932). On June 17, 2016, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for June 30, 2016. On June 30, 2016, ALJ Triana issued amended Hearing Decision 16-UI-62861, dismissing claimant's hearing request for failure to appear at the hearing. On July 20, 2016, Hearing Decision 16-UI-62861 became final, without a request to reopen or application for review having been filed. On July 22, 2016, the Department issued decision # 193823 which assessed, based on decision # 73932, an \$885 overpayment, seven penalty weeks, and a \$132.75 monetary penalty.

On July 29, 2016, claimant filed an untimely request to reopen the hearing on decision # 73932. On August 11, 2016, decision # 193823 became final, without a request for hearing having been filed. On August 24, 2016, claimant filed an untimely request for hearing on decision # 193823. On September 13, 2016, ALJ Triana conducted a hearing on claimant's request to reopen, and on September 16, 2016, issued Hearing Decision 16-UI-67592, dismissing claimant's request to reopen as untimely. On October 6, 2016, Hearing Decision 16-UI-67592 became final, without an application for review having been filed with the Employment Appeals Board (EAB).

On September 16 and 30, 2016, ALJ Wyatt conducted a hearing on claimant's request for hearing on decision # 193823, and on October 7, 2016, issued Hearing Decision 16-UI-68836 which allowed claimant's late hearing request and modified decision # 193823 by assessing a \$885 overpayment but no monetary penalty or penalty weeks. On October 12, 2016, claimant filed an application for review of Hearing Decision 16-UI-68836 with EAB.

No adversely affected party requested review of those portions of Hearing Decision 16-UI-68836 which allowed claimant's untimely request for hearing, and which assessed no monetary penalty or penalty weeks. We therefore confined our review to the issue of claimant's overpayment.

FINDINGS OF FACT: (1) On April 13, 2016, claimant filed an initial claim for unemployment benefits. When he filed his initial claim, he reported to the Department that he had been laid off by his employer, Blue Sky Farm, due to a lack of work.

(2) Claimant claimed benefits for the period April 17 through May 21, 2016 (weeks 16-16 through 20-16). The Department paid him benefits in the amount of \$177 per week for each of these weeks for a total of \$885. Claimant received the benefits the Department paid him for each of these weeks.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant was overpaid benefits and is liable to pay the amount of the overpayment to the Department.

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.*

When claimant filed his initial claim for benefits on April 13, 2016, he reported to the Department that his employer had laid him off because of a lack of work. The Department paid claimant benefits during the weeks at issue (weeks 16-16 through 20-16) based on information that claimant qualified for these benefits on the basis of this work separation. On May 27, 2016, however, the Department issued a decision concluding that claimant had voluntarily left work for his employer without good cause and was therefore disqualified from receiving unemployment benefits on the basis of his work separation. Claimant requested a hearing on this decision, but failed to appear at the hearing and his hearing request was dismissed on June 30, 2016 by Hearing Decision 16-UI-62861. His untimely request to reopen his hearing was then denied on September 16, 2016 by Hearing Decision 16-UI-67592, and claimant did not appeal this decision. For the purpose of determining the scope of EAB's review, the May 27, 2016 administrative decision and Hearing Decision 16-UI-67592 establish that claimant was disqualified from receiving unemployment benefits during the weeks at issue because he voluntarily left work for the employer without good cause. In this review, EAB has no jurisdiction to reach the issue of claimant's work separation or determine if claimant had good cause for his untimely request to reopen his hearing on the Department's May 27, 2016 decision. EAB's review is limited to whether claimant received the benefits the Department allegedly paid to him for the weeks at issue, and whether claimant received those benefits because he made a false statement or misrepresentation.

The Department paid claimant based on his statement that the employer laid him off for lack of work. That assertion was false or misleading because the May 27, 2016 administrative decision established as a matter of law that claimant voluntarily left work without good cause. Regardless of claimant's knowledge or intent in informing the Department he was laid off due to lack of work, he is nonetheless liable to repay the overpayment to the Department because the overpayment resulted from his false or misleading statement. It is undisputed that the Department paid claimant \$885 in benefits during the weeks at issue, and that claimant received the money. Because the Department paid claimant benefits during weeks he was disqualified from receiving them, claimant was overpaid \$885.

DECISION: Hearing Decision 16-UI-68836 is affirmed. *Decisión de la Audiencia 16-UI-68836 queda confirmada.*

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

DATE of Service: November 9, 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. 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.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.