

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0776

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On April 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with the employer without good cause (decision # 82232). On April 27, 2017, the Department served notice of an administrative decision assessing a \$4,573 overpayment, \$685.95 monetary penalty and 31 penalty weeks (decision # 200256). On May 4, 2017, decision # 82232 became final without claimant having filed a timely request for hearing. On May 9, 2017, claimant filed a late request for hearing on decision # 82232 and a timely request for hearing on decision # 200256. On June 6, 2017, ALJ S. Lee convened a hearing on decision # 82232, at which time claimant withdrew his late request for hearing on that decision, and the ALJ issued Hearing Decision 17-UI-85005, dismissing claimant's request for hearing on decision # 82232 based on the withdrawal. Also on June 6, 2017, ALJ S. Lee conducted a hearing on decision # 200256. On June 8, 2017, ALJ S. Lee issued Hearing Decision 17-UI-85291, affirming the assessment of a \$4,573 overpayment but concluding that claimant was not liable for any misrepresentation penalties. On June 27, 2017, claimant filed an application for review of Hearing Decision 17-UI-85291 with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, the outcome would remain the same for the reasons explained.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that he is not liable for misrepresentation penalties are **adopted**.

FINDINGS OF FACT: (1) Prior to December 5, 2016, claimant voluntarily left a job with the employer. On December 5, 2016, claimant filed an initial claim for unemployment insurance benefits. He reported to the Department that the employer had laid him off work. Shortly thereafter, claimant discussed details about his separation with a Department employee.

(2) Claimant filed weekly claims for benefits from December 11, 2016 to April 8, 2017 (weeks 50-16 to 14-17). The Department paid claimant \$269 in benefits for each of those weeks. Had claimant reported that he had voluntarily left work, the Department would have investigated whether he was disqualified from benefits before paying him for any of the weeks he claimed.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid \$4,573 that he is liable to repay.

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.*

The decision establishing claimant's disqualification from benefits during all the weeks at issue in this matter is final, and conclusively establishes that benefits were not payable to claimant for the weeks in which the Department paid claimant a total of \$4,573. The Department therefore overpaid claimant in that amount as a matter of law. The reason the overpayment occurred was not because a Department employee ignored what claimant said about his work separation sometime after filing his initial claim, it occurred because, at the time of claimant's initial claim filing, he reported to the Department that he was laid off instead of reporting that he had quit work. It appears on this record that claimant misreported his work separation to the Department because he made an innocent mistake or failed to understand how the Department would want him to report the separation. Regardless of claimant's knowledge or intent in making that erroneous report to the Department, however, ORS 657.310(1) provides that claimant is now responsible for repaying the overpaid benefits to the Department.

DECISION: Hearing Decision 17-UI-85291 is affirmed.

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

DATE of Service: July 21, 2017

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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