

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0833

Affirmed
Overpayment and Penalties

PROCEDURAL HISTORY: On March 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$788.00 overpayment, a \$118.20 monetary penalty and 12 penalty weeks (decision # 193979). Claimant filed a timely request for hearing. On June 29, 2017, ALJ Triana conducted a hearing at which the employer failed to appear, and on July 5, 2017 issued Hearing Decision 17-UI-87197, affirming the department's decision. On July 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Before October 2016, claimant had five prior unemployment insurance claims. On February 3, 2006, the Department issued an administrative decision that concluded that claimant willfully made a misrepresentation to obtain benefits by failing to report that he had earnings that affected his weekly benefit amount when he claimed benefits. That decision is final. Claimant had reported earnings in the past on other weekly claims.

(2) On October 31, 2016, claimant filed an initial claim for unemployment insurance benefits online. His weekly benefit amount was \$394. The maximum weekly benefit amount in effect when claimant filed his claim was \$590.

(3) Claimant filed weekly claims for benefits for the weeks November 27 through December 3, 2016 and December 11 through December 17, 2016 (weeks 48-16 and 50-16), the weeks at issue. Each time claimant filed a weekly claim for benefits, the Department required him to report any hours of work or earnings he had during the week being claimed.

(4) On November 30, 2016, claimant began working for the employer, TEC Equipment, Inc. For week 48-16, claimant worked 26 hours over four days and earned wages of \$400.20. For week 50-16, claimant worked 41 hours over five days and earned wages of \$615.

(5) When claimant claimed benefits for week 48-16 and 50-16, he responded “no” to the request, “If you worked last week . . . , fill in the number of hours and your gross earnings (before deductions),” and reported no hours or earnings for weeks 48-16 and 50-16. Exhibit 1 at 20-21. Because claimant did not report work or earnings for each week at issue, the Department paid claimant \$394 each of the two weeks at issue.

(6) For weeks 49-16 and 51-16, claimant reported earnings of \$585 and \$500, respectively. Exhibit 1 at 19.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid and must repay the \$788.00 overpayment, is liable for a \$118.20 monetary penalty, and as an additional penalty, is disqualified from receiving future benefits for a period of 12 weeks.

An individual is considered “unemployed” in any week during which the individual performs no services and with respect to which no remuneration is paid or payable, or in any week of less than fulltime work if the remuneration paid or payable is less than the individual’s weekly benefit amount. ORS 657.100. Benefits are only payable to unemployed individuals. *See* ORS 657.155.

During the two weeks from November 27 through December 3, 2016 and December 11 through December 17, 2016 (48-16 and 50-16), claimant earned \$400.20 and \$615, respectively. Each week, his earnings exceeded his weekly benefit amount of \$394. Claimant was, therefore, not unemployed or entitled to benefits for those weeks and the Department overpaid him \$394 for each week. Claimant thus received a total of \$788 in unemployment insurance benefits he was not entitled to receive.

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 \$788 in benefits he was not entitled to receive because he falsely reported to the Department that he did not work or have earnings in either week at issue. Regardless of what claimant knew or intended at the time he made those false reports, because claimant’s false statements caused the overpayment, he is liable to repay the overpayment to the Department.

An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified from benefits for a period not to exceed 52 weeks. ORS 657.215. Claimant asserted at hearing that his false reports were not intentional, and that he “didn’t pay attention,” “thought he was filling stuff out right,” and “didn’t double-check things” when claiming the weeks at issue. Audio Record at 27:39 to 28:07. Claimant’s argument is not plausible. Claimant also testified that he understood that the Department required him to report any earnings he had during each week he claimed, and he had reported earnings in the past. Audio Record at 29:21 to 29:31. Moreover, although claimant reported no earnings in week 48-16 and 50-16, he did report different earnings during weeks 49-16 and 51-16, even though the Department’s questions were the same each week, requiring him to provide his hours and earnings each week. It is more likely than not

that carelessness did not cause claimant to forget he had worked during the weeks he was claiming, confuse his earnings or forget his full time earnings. It is more likely than not that his failures to report his hours and earnings were willful acts to obtain benefits. Because claimant willfully made false reports to obtain benefits, he is liable for misrepresentation penalties.

Under OAR 471-030-0052(1) (February 23, 2014), the length of the penalty disqualification period is determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s) 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. $\$788$ (claimant's overpayment) \div $\$590$ (maximum weekly benefit amount) = $1.34 \times 4 = 5.36$, rounded up = 6 weeks. Claimant is liable to have his penalty doubled under OAR 471-030-0052(2) because he was previously disqualified from benefits under OAR 657.215. $6 \text{ weeks} \times 2 = 12 \text{ weeks}$. Claimant's total penalty disqualification period is, therefore, 12 weeks.

Finally, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is also 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 percentage applied is based on the number of occurrences of misrepresentation. An "occurrence" is "counted each time an individual willfully makes a false statement." OAR 471-030-0052(7). In this case, claimant made two willfully false statements, first when he answered "no" to whether he had hours worked or earnings for week 48-16, and second when he answered "no" to whether he had hours worked or earnings for week 50-16. Under OAR 471-030-0052(7)(b), an individual with two misrepresentation occurrences is liable for a penalty totaling 15% of the total overpayment amount. Fifteen percent of $\$788$ equals $\$118.20$, which is claimant's total monetary penalty.

In sum, claimant is liable to repay the $\$788$ overpayment and the $\$118.20$ monetary penalty to the Department, and is disqualified from 12 weeks of benefits that are otherwise payable.

DECISION: Hearing Decision 17-UI-87197 is affirmed.

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

DATE of Service: August 9, 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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