

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0889

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On March 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left a job at Jack In The Box on February 29, 2017 without good cause, and was therefore denied benefits (decision # 101944). On March 27, 2017, decision # 101944 became final without claimant having filed a timely request for hearing. On April 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$5,542 overpayment (decision # 111020).

On May 15, 2017, claimant filed a timely request for hearing on decision # 111020, and a late request for hearing on decision # 101944. On May 24, 2017, the Office of Administrative Hearings (OAH) mailed notice of two hearings scheduled for June 8, 2017: a hearing on decision # 101944 at 2:30 p.m., and a hearing on decision # 111020 at 3:30 p.m. On June 8, 2017, claimant failed to appear at the 2:30 p.m. hearing on decision # 101944; she appeared at the 3:30 p.m. hearing on decision # 111020. On June 9, 2017, ALJ Wyatt issued Hearing Decision 17-UI-85298, dismissing claimant's request for hearing on decision # 101944 because of her failure to appear. On June 14, 2017, ALJ Wyatt issued Hearing Decision 17-UI-85682, affirming decision # 111020.

On June 24, 2017, claimant filed an application for review of Hearing Decision 17-UI-85682 with the Employment Appeals Board (EAB). The same day, claimant filed a request to reopen the June 8th hearing on decision # 101944 with OAH. EAB's review of this matter is confined to the overpayment issue presented in decision # 111020 and Hearing Decision 17-UI-85682; we have no jurisdiction to address the reopen issue, late request for hearing or the merits of decision # 101944.

Department records show that claimant's request to reopen is pending at OAH and has not yet been scheduled for a hearing. The overpayment amount in this case is based entirely upon the finality of decision # 101944. We therefore note that if claimant's request to reopen is allowed, and her late request for hearing allowed, and decision # 101944 reversed or modified, the existence or amount of the overpayment in this case is subject to change.

EAB considered claimant's written argument when reaching this decision to the extent it was relevant and material to the issue before us to review.

FINDINGS OF FACT: (1) Effective November 8, 2015, claimant filed an initial claim for unemployment insurance benefits.¹

(2) On February 29, 2017, claimant voluntarily left a job at Jack In The Box. Claimant filed weekly benefits for the weeks of February 28, 2017 to May 21, 2017 (weeks 9-16 to 20-16). When claimant filed her claims for those weeks she did not report to the Department that she had quit her job with Jack In The Box. Based on claimant's failure to report the work separation, the Department paid her \$5,736 in benefits for those weeks.

(3) The Department subsequently assessed a \$194 overpayment to claimant based on errors in her wage reports during weeks 9-16 to 20-16. Claimant subsequently repaid the \$194 overpayment to the Department; she was therefore paid net benefits for the weeks of 9-16 to 20-16 in the amount of \$5,542.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant was overpaid \$5,542 in unemployment insurance benefits that she is required 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.*

Decision # 101944, which established claimant's disqualification from receiving benefits during weeks 9-16 to 20-16, is final. Therefore, as a matter of law, claimant is disqualified from benefits for those weeks and not entitled to receive the \$5,542 in benefits she received during those weeks. Claimant received the benefits because she failed to disclose her February 29, 2017 work separation from Jack In The Box. Regardless of claimant's knowledge or intent in failing to disclose the work separation, she is liable to repay the overpaid benefits to the Department because it occurred due to her failure to disclose it. Claimant was overpaid \$5,736 for the weeks at issue, but has already repaid \$194 to the Department. She is therefore liable to repay only the remaining balance, \$5,542.

DECISION: Hearing Decision 17-UI-85682 is affirmed.

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

¹ The record shows that claimant's benefit year for the claim at issue expires week 45-16; a claim with a benefit year expiring week 45-16 had to have been filed during the week of November 15, 2015 to November 21, 2015 (week 46-15). We take notice of the effective date of claimant's initial claim filing. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

DATE of Service: July 31, 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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