

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0957

Affirmed
Overpayment of \$125 Assessed, No Penalties

PROCEDURAL HISTORY: On June 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work on April 1, 2017 and was disqualified from benefits beginning on March 26, 2017 based on that work separation (decision # 153267). Claimant filed a timely request for hearing on decision # 153267. On June 30, 2017, the Department served notice of an administrative decision assessing an overpayment of \$250 based on decision # 153267, and assessing a penalty of \$37.50 and 4 penalty weeks based on claimant's willful misrepresentation (decision # 193356). Claimant filed a timely request for hearing on decision # 193356. On July 26, 2017, ALJ Frank conducted two hearings at which the employer did not appear, one at 9:30 a.m. on decision # 153267 and one at 10:45 a.m. on decision # 193356. On July 27, 2017, ALJ Frank issued Hearing Decision 17-UI-89081, modifying decision # 153267 and concluding that claimant voluntarily left work on April 8, 2017 and was disqualified from benefits effective August 2, 2017 based on that work separation. On August 2, 2017, ALJ Frank issued Hearing Decision 17-UI-89465, modifying decision # 193356 and concluding claimant was liable for an overpayment of \$125, but assessing no penalties. On July 31, 2017, claimant filed an application for review of Hearing Decision 17-UI-89081 with the Employment Appeals Board (EAB) and withdrew that application for review by a letter that EAB received on August 14, 2017. On August 16, 2017, Hearing Decision 17-UI-89081 became final with no application for review then pending. On August 19, 2017, claimant filed an application for review of Hearing Decision 17-UI-89465 with EAB.

Claimant submitted a written argument that contained information that he did not attempt to present during the hearing. Claimant did not explain why he did not offer this information at the hearing and otherwise failed to show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On March 17, 2017, claimant filed an initial claim for unemployment benefits. That claim was determined valid with a weekly benefit amount of \$208.

(2) Sometime before March 26, 2017, claimant began working for B.R.U. Incorporated. Claimant claimed benefits for the week of March 26, 2017 through April 1, 2017 (week 13-17) and the Department paid him \$125 for that week. Claimant was not paid his full weekly benefit amount for that week because he reported that he had earnings from B.R.U. When claimant filed his claim for that week, he responded “no” when asked, “Did you quit a job last week?” Audio at ~14:04.

(3) On April 8, 2017, claimant quit work with B.R.U. Claimant claimed and was paid \$125 in benefits for the week of April 2, 2017 through April 8, 2017 (week 14-17). Claimant was again not paid his full weekly benefit amount due to reporting earnings from B.R.U. in that week. When claimant filed his claim for week 14-17, he responded “no” asked, “Did you quit a job last week?” Audio at ~14:04. Claimant failed to indicate that he had quit work that week with B.R.U. because he was accustomed to responding that he had not quit during the week for which he was claiming benefits and, without thinking, he gave his regular and habitual reply to that question. Audio at ~20:46.

(4) Sometime after April 8, 2017, the Department sent a letter to claimant stating it had received information that he had quit working for B.R.U. on April 1, 2017. Claimant agreed he had quit work, but stated that the last day he worked for the employer was April 7, 2017.

CONCLUSIONS AND REASONS: Claimant was paid \$125 in benefits to which he was not entitled and he is liable to repay those benefits to the Department or to have them deducted from any future benefits otherwise payable to him. Claimant is not liable for the assessment of any penalties.

Overpayment. ORS 657.310 states that an individual who receives any benefits to which the individual is not entitled because the individual, *regardless of the individual’s knowledge or intent*, made or caused to be made a false statement or misrepresentation of material fact or failed to disclose a material fact is liable to repay the benefits or to have that amount deducted from any future benefits otherwise payable to the individual (emphasis added). It was undisputed that claimant was paid benefits for weeks 13-17 and 14-17, in part, because he did not communicate to the Department that he left work in either week, which would have resulted in a suspension of his claim, and non-payment of benefits, pending investigation of the facts underlying the work separation. Audio at ~13:39.

With respect to week 13-17, Hearing Decision 17-UI-89081 establishes as matter of law that claimant did not leave work in that week, but in week 14-17. That decision became final on August 16, 2017, with no pending application for review then on file. Consequently, claimant’s implicit representation to the Department that he had not left a job during week 13-17 was correct and accurate. Claimant was therefore entitled to receive the \$125 in benefits he was paid for week 13-17. As to week 14-17, Hearing Decision 17-UI-89081 concluded and claimant agreed that he quit a job in that week and he did not disclose that work separation to the Department. As such, claimant’s certification to the Department that he had not quit a job the week was inaccurate and false and it caused him to be paid benefits. Regardless of claimant’s state of mind when he failed to reveal that work separation, he received \$125 in benefits for that week to which he was not entitled and he is liable to repay that amount to the Department or to have that amount deducted from any future benefits otherwise payable to him.

Penalties. ORS 657.215 and ORS 657.310(2), read together, provide that an individual who has received benefits to which the individual is not entitled because of willfully false statements or misrepresentations or willful failures to report material facts may be subject to a monetary penalties and penalty weeks of benefit disqualification. Here, claimant's explanation was plausible that he did not disclose a work separation during week 14-17 due to responding to the weekly claim questions in a quick and automatic manner, giving the responses that he was in the habit of giving. That claimant was not willfully trying to hide the work separation from the Department is corroborated by the fact that he freely admitted to the Department on June 20, 2017 that he had resigned from the job with the employer during week 14-17. On this record, it appears most likely that claimant did not intend to deceive the Department about his work separation during week 14-17 in order to receive benefits to which he was not entitled, and his failure to disclose that separation was merely careless or inadvertent, rather than willful. As a result, claimant should not be, and is not assessed monetary or nonmonetary penalties.

DECISION: Hearing Decision 17-UI-89465 is affirmed.

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

DATE of Service: August 24, 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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