

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1176

Hearing Decision 17-UI-92661 Affirmed
Overpayment Assessed
Hearing Decision 17-UI-92660 Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On June 8, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions concluding claimant was not available for all suitable work during the week of January 29, 2017 through February 4, 2017 (decision # 111841) and the week of March 5, 2017 through March 11, 2017 (Decision # 111432). On June 28, 2017, decisions # 111841 and # 111432 became final without claimant having filed requests for hearing. On June 9, 2017, the Department served an administrative decision concluding that due to an error in reporting her earnings, claimant was overpaid \$1,710 in benefits and must repay that amount to the Department (decision # 193635). On June 13, 2017, claimant filed a timely request for hearing on decision # 193635. On June 15, 2017, the Department issued administrative decision # 203761, canceling decision # 193635 and concluding that claimant did not willfully make a misrepresentation, and decreasing the overpayment amount due to claimant's earnings to \$515. On July 14, 2017, the Department served notice of an administrative decision canceling decision # 203761 and decreasing the overpayment amount due to claimant's earnings to \$484 (decision # 193877). On July 20, 2017, the Department served notice of an administrative decision, based on decision # 111841, concluding claimant was overpaid and must repay \$201 in benefits (decision # 93123). On July 24, 2017, claimant filed a timely request for hearing on decision # 93123, and a late request for hearing on decision # 111841. On September 14, 2017, ALJ Murdock conducted hearings on decisions # 93123 and # 193877, and on September 15, 2017 issued Hearing Decision 17-UI-92661 affirming decision # 93123, and Hearing Decision 17-UI-92660 affirming decision #193877. On October 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB) regarding Hearing Decisions 17-UI-92661 and 17-UI-92660.

Claimant submitted a written argument to EAB with her application for review of Hearing Decisions 17-UI-92661 and 17-UI-92660. EAB considered claimant's written argument and the entire hearing record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-92661 and 17-UI-92660. For case-tracking purposes, this decision is being issued in duplicate

(EAB Decisions 2017-EAB-1175 and 2017-EAB-1176).

FINDINGS OF FACT: (1) On January 26, 2017, claimant filed an initial claim for unemployment insurance benefits. That claim was determined valid with a weekly benefit amount of \$428.

(2) Claimant claimed benefits for the week of January 22 through January 28, 2017 (week 04-17) and reported earnings of \$415.26 for work performed that week. Claimant's employer, The Mill Casino Hotel, reported to the Department that claimant earned \$507.54 working for it that week. Based on claimant's reported earnings that were less than her weekly benefit amount of \$428, the Department initially gave claimant waiting week credit for that week.

(3) Claimant claimed benefits for the week of January 29, 2017 through February 4, 2017 (week 05-17). Claimant reported earnings of \$353.74 for week 05-17, and that she was available for all suitable work that week. The Mill Casino Hotel reported that claimant earned \$369.12 working for it that week. Administrative decision #111841 determined that claimant was not available for work during week 05-17 and has become final. Because claimant reported that she was available for all suitable work during week 05-17, Department overpaid her benefits. Claimant was overpaid \$15 based on her failure to accurately report her earnings for week 05-17, and overpaid \$201 because she reported that she was available for work during week 05-17.

(4) Claimant claimed benefits for the week of February 12 through February 18, 2017 (week 07-17) and reported earnings of \$413.64 for work performed that week. The Mill Casino Hotel reported that claimant earned \$399.88 working for it that week. Based on claimant's reported earnings and her report that she was available for work during week 05-17, the Department overpaid claimant \$157 in benefits for week 07-17, because week 07-17, and not week 04-17, was the correct waiting week.

(5) Claimant claimed benefits for the week of March 5 through March 11, 2017 (week 10-17) and reported earnings of \$414.18 for work performed that week. The Mill Casino Hotel reported that claimant earned \$476.88 working for it that week. Based on claimant's reported earnings that were less than her weekly benefit amount, the Department overpaid claimant \$156 in benefits for week 10-17.

(6) Claimant claimed benefits for the week of March 12 through March 18, 2017 (week 11-17) and reported earnings of \$414.18 for work performed that week. The Mill Casino Hotel reported that claimant earned \$480.63 working for it that week. Based on claimant's reported earnings that were less than her weekly benefit amount, the Department overpaid claimant \$156 in benefits for week 11-17.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid \$201 for week 05-17 because she was not available for work. We also agree that claimant underreported earnings and therefore was overpaid \$484 in benefits. We conclude that claimant is liable to repay these amounts or have them deducted from any future benefits otherwise payable to her under ORS chapter 657.

ORS 657.310(1) provides that if an individual receives 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 a material fact, or failed to disclose a material fact, the individual is liable to repay the amount of the benefits or to have the amount of the benefits deducted from any future benefits otherwise payable to the individual.

ORS 657.155(1)(c) provides that an individual is eligible to receive benefits for any week only if the individual is available for work during that week. Moreover, only “unemployed” individuals are eligible for benefits. ORS 657.150(1). An individual is not “unemployed,” and, therefore, ineligible for benefits, in any week in which her earnings exceed her weekly benefit amount. *See* ORS 657.100(1). An eligible individual who has employment in any week claimed shall have her weekly benefit amount reduced by the amount of earnings paid or payable that exceeds the greater of ten times the Oregon minimum hourly wage or one-third of her weekly benefit amount. ORS 657.150(1). A claimant is responsible for furnishing the Department with the information required for correctly processing the claim, including “current work activity and earnings.” OAR 471-030-0025 (December 16, 1985).

Weeks 05-17 and 10-17. Claimant did not dispute that she received \$201 in benefits for week 05-17, \$156 in benefits for week 10-17, and that she reported to the Department that she was available for work when she claimed those benefits. Decisions # 111841 and # 111432 became final on June 28, 2017 and established as a matter of law that claimant was not available for work during weeks 05-17 and 10-17, respectively. That means that her representations about being available for work when she made her weekly claim report during weeks 05-17 and 10-17 were false as a matter of law. While claimant disputed the conclusion that she was not available for work during week 05-17, decision # 111841 is final and cannot be disputed in proceedings regarding decision # 93123. Because decisions # 111841 and # 111432 established that claimant was ineligible to receive benefits during weeks 05-17 and 10-17 because she was not available for work, and claimant would not have received benefits during those weeks absent her representations that she was available to work those weeks, claimant received benefits to which she was not entitled during weeks 05-17 and 10-17 even if she did not know at that time that her representation about being available to work was false and thought she was available for work. Accordingly, claimant was overpaid \$201 in benefits for week 05-17 and \$156¹ in benefits for week 10-17, which she is liable to repay or have deducted from future benefits otherwise payable to her.

Weeks 04-07, 05-17, 07-17, 10-17, 11-17. Claimant did not dispute that she underreported her earnings during weeks 04-17, 05-17, 10-17 and 11-17. Based on those underreported earnings, claimant received \$484 in benefits she was not entitled to receive. Claimant was entitled to \$0 benefits and no waiting week credit for weeks 04-17, 10-17 and 11-17 because she earned more than her weekly benefit amount and was thus not “unemployed” during those weeks. *See* ORS 657.100(1). Claimant was entitled to \$15 less in benefits for week 05-17 because she underreported her earnings. She was not entitled to waiting week credit for week 05-17 because she was not available for work that week, as explained above. The record shows that the Department correctly calculated the total amount of the overpayment. Accordingly, we agree with the ALJ that claimant was overpaid benefits for the weeks at issue in the additional amount of \$484, which claimant is liable to either repay or have deducted from any future benefits otherwise payable to her.

DECISION: Hearing Decisions 17-UI-92661 and 17-UI-92660 are affirmed.

J. S. Cromwell and D. P. Hettle.

¹ The amount of \$156 for week 10-17 was overpaid for two reasons, because claimant was not available for work during week 10-17 and underreported her earnings that week, but is only counted as one overpayment amount in Hearing Decision 17-UI-92660, as part of the total of \$484.

DATE of Service: November 6, 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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