

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0229**

*Affirmed*  
*Overpayment and Penalties*

**PROCEDURAL HISTORY:** On December 29, 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 \$1,812.00 overpayment, a \$362.40 monetary penalty and 12 penalty weeks (decision # 195944). Claimant filed a timely request for hearing. On February 9, 2018, ALJ Frank conducted a hearing, and on February 16, 2018 issued Hearing Decision 18-UI-103479, affirming decision # 195944. On March 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument to the extent it was based on the hearing record.

**FINDINGS OF FACT:** (1) On August 15, 2017, claimant filed an initial claim for unemployment insurance benefits. His weekly benefit amount was \$604. The maximum weekly benefit amount in effect when claimant filed his claim was \$604.

(2) On September 5, 2017, claimant began working for the employer, LRS Architects, Inc. For week 36-17, claimant worked 32 hours and earned wages of \$896. For each of weeks 37-17 and 38-17, claimant worked 40 hours and earned wages of \$1,120.

(3) Claimant filed claims for benefits online each week for the weeks September 3 through September 23, 2017 (weeks 36-17, 37-17 and 38-17), the weeks at issue. Each time claimant filed a weekly claim for benefits for the weeks at issue, claimant answered "no" to the question, "Did you work last week?" Audio Record at 9:41-9:51. Claimant intentionally answered "no" for each week at issue because he knew that if he answered "yes," the Department would not pay him benefits for that week. Had claimant answered "yes" to the question, the online claims system would have asked him to state the number of hours he worked and his earnings for that week. Claimant did not report having worked any hours or any earnings to the Department for the weeks at issue.

(4) Because claimant did not report hours worked or earnings for each week at issue, the Department paid claimant \$604 for each of those weeks.

(5) Claimant has no prior disqualification under ORS 657.215.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was overpaid and must repay the \$1,812.00 overpayment, is liable for a \$362.40 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 weeks 36-17, 37-17 and 38-17, claimant earned \$896, \$1,120 and \$1,120, respectively. Each week, his earnings exceeded his weekly benefit amount of \$604. Claimant was, therefore, not unemployed or entitled to benefits for those weeks, and the Department overpaid him \$604 for each week. Claimant thus received a total of \$1,812 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 \$1,812 in benefits he was not entitled to receive because he falsely reported to the Department that he did not work during the weeks 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 he made his false reports because a Department representative told him in August 2017 that there was a “back up in issuing claims” of about three weeks, and he therefore told the Department when he made his weekly claims for each of the weeks at issue that he did not work because he felt he would otherwise be denied benefits. Audio Record at 18:10 to 19:55. Regardless of his reason for why he believed he was entitled to benefits due to a Department “back up,” claimant’s explanation shows his intent in reporting that he was not working during the weeks at issue was to provide incorrect information to the Department to obtain benefits. Claimant also testified that he believed he was entitled to benefits until he received his first paycheck from his new employer. Audio Record at 21:02 to 22:21. Claimant’s assertion does not explain why claimant would falsely answer the unambiguous question, “Did you work last week?” The question was not, “Did you receive a paycheck last week?” The preponderance of the evidence shows claimant falsely answered the question 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.  $\$1,812$  (claimant's overpayment)  $\div$   $\$604$

(maximum weekly benefit amount) =  $3 \times 4 = 12$ , rounded up to the nearest whole number = 12 weeks. Claimant's total penalty disqualification period is, therefore, 12 weeks. In his written argument, claimant asked that the 12-week penalty be waived. Employment Department law does not offer a waiver for this penalty.

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 three willfully false statements, by answering "no" to whether he had worked while making a weekly claim for each of the three weeks at issue. Under OAR 471-030-0052(7)(b), an individual with three misrepresentation occurrences is liable for a penalty totaling 20% of the total overpayment amount. Twenty percent of \$1,812 equals \$362.40, which is claimant's total monetary penalty.

In sum, claimant is liable to repay the \$1,812 overpayment and the \$362.40 monetary penalty to the Department, and is disqualified from 12 weeks of benefits that are otherwise payable.

**DECISION:** Hearing Decision 18-UI-103479 is affirmed.

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

**DATE of Service:** April 2, 2018

**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](http://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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