

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0687

Modified
Overpayment Subject to Collection by Deduction, Not Repayment

PROCEDURAL HISTORY: On March 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work from Prink Technologies without good cause. On March 29, 2018, that decision became final without claimant having filed a request for hearing. On May 10, 2018, the Department served notice of an administrative decision concluding that claimant was overpaid benefits in the amount of \$1,820 in part because he failed to disclose a material fact to the Department, and was therefore liable to repay that amount to the Department (decision # 154027). Claimant filed a timely request for hearing on decision # 154027. On June 20, 2018, ALJ Seideman conducted a hearing, and on June 21, 2018 issued Order No. 2018-UI-111735, affirming the Department's decision # 154027. On July 7, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and the portions of claimant's argument that are based on the record when reaching this decision.

FINDINGS OF FACT: (1) On September 8, 2017, claimant filed an initial claim for unemployment insurance benefits establishing a weekly benefit amount of \$260. Claimant told a Department representative when he began his claim and on other occasions during January and February 2018 that he left his job with Prink Technologies because he found the conditions there to be unsafe and in violation of OSHA requirements.

(2) The Department initially determined that claimant was eligible for benefits and not disqualified from receiving payments and, beginning January 14, 2018, paid claimant \$260 per week each week claimant claimed benefits. From January 14, 2018 through March 3, 2018, the Department paid claimant \$1,820 in benefits based on his weekly claims.

(3) Subsequently, the Department undertook additional investigation regarding whether claimant should be disqualified from receiving unemployment insurance benefits based on his work separation from Prink Technologies and concluded that claimant should be disqualified from benefits because he voluntarily left work without good cause. As a result, claimant was disqualified from benefits retroactively effective to the week of his work separation from Prink Technologies.

(4) On March 9, 2018, the Department mailed notice that claimant was disqualified from receipt of benefits to claimant at his address of record. Claimant received the notice within a couple of days after it was mailed. Although the decision stated that it denied benefits, claimant decided not to request a hearing because he had found another job and did not plan to claim additional weeks.

CONCLUSIONS AND REASONS: We agree that claimant was overpaid benefits totaling \$1,820, but disagree with the ALJ that claimant is liable to repay the Department for the overpaid benefits, and conclude that claimant is liable only to have the overpayment deducted from future benefits otherwise payable.

ORS 657.310(1) states that an individual who is overpaid benefits “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” is liable to either repay the benefits or have the overpayment deducted from any future benefits otherwise payable. ORS 657.315(1) states that if the overpayment occurred “because of an error not due to the individual providing a false statement or misrepresentation of a material fact or not disclosing a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, the individual is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter or the equivalent law of another state for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.” Where, as here, the Department initially paid benefits to claimant and now seeks to recoup them, the Department has the burden to prove that benefits should not have been paid and that a false statement or misrepresentation occurred.

There is no dispute in this case that the Department paid claimant \$1,820 in unemployment insurance benefits, nor is there any dispute that the administrative decision issued on March 9, 2018, regarding claimant’s work separation from Prink Technologies, holds that claimant was not entitled to receive any of those benefits. Thus, unless the March 9 decision is reversed or modified in any proceedings that follow this decision, claimant was overpaid \$1,820. The only remaining dispute at this time is whether claimant should be liable to repay the amount of the overpayment to the Department under ORS 657.310, or if he is instead liable to have the overpayment deducted from future benefits otherwise payable under ORS 657.315.

In Order No. 2018-UI-111735, the ALJ found as fact that the Department would have suspended payment of benefits to claimant if claimant had told the Department that he voluntarily left work.¹ The ALJ concluded that claimant caused the overpayment by reporting to the Department that his work separation was due to a lack of work and was therefore liable to repay the overpayment to the

¹ Order No. 2018-UI-111735 at 1.

Department under ORS 657.310 irrespective of his knowledge or intent.² However, the record does not support the ALJ's conclusion that claimant caused the overpayment and is liable to repay the overpayment rather than have it deducted from future benefits.

The Department's conclusions after its investigation regarding whether claimant was disqualified from benefits based on his work separation from Prink Technologies cannot be challenged in this decision. To reiterate, the issue for this case is whether the material facts claimant reported to the Department were false or constituted a misrepresentation. The Department witness asserted at hearing that claimant caused the overpayment by reporting to the Department that his work separation was due to a lack of work. Audio Record at 8:52 to 9:09. Despite the reason claimant selected for his work separation when he filed his initial claim, the record shows that claimant explained to a Department representative in detail the reasons for his work separation from Prink Technologies, including that he quit due to an unsafe work environment. To support a conclusion that claimant made false statements or misrepresentations of material fact, it is not enough to show that claimant's reports to the Department were inconsistent with the legal conclusions the Department ultimately drew therefrom. The facts claimant gave the Department were accurate and not false, and were not misrepresentations because they would not reasonably give the Department a false idea about his work separation. The record does not, therefore show that the material facts claimant supplied to the Department, either at the time of his initial claim filing or while he claimed the benefits that were overpaid were false or misrepresentations.

Claimant was overpaid because the Department's initial decision to pay benefits was subsequently reversed by a decision finding him ineligible for benefits, and, in this case, the reversal was not caused by claimant's failure to accurately report material facts. Therefore, ORS 657.315 applies, and claimant is not liable to repay the overpayment. Instead, claimant is liable to have the overpayment deducted from future benefits otherwise payable under ORS chapter 657 or the equivalent law of another state for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

DECISION: Order No. 2018-UI-111735 is modified, as outlined above.

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

DATE of Service: August 9, 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. 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.

² *Id.* at 1-2.

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