

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0763

Order No. 18-UI-113870 Affirmed ~ Late Request to Reopen Denied
Petición Tardía para Volverse a Abrir la Audiencia es Negada

Order No. 18-UI-114103 Modified ~ Overpayment Subject to Collection by Deduction, No Penalties
Sobrepago Sujeto a Cobro por Deducción, No Sanciones

PROCEDURAL HISTORY: On May 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for Meduri Farms, Inc. without good cause (decision # 92517). Claimant filed a timely request for hearing. On May 29, 2018, the Department served notice of another administrative decision assessing a \$2,961 overpayment, disqualifying claimant from 20 week of future benefits, and assessing a monetary penalty of \$444.15 (decision # 194065). On June 6, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 92517 scheduled for June 20, 2018, at which claimant failed to appear. On June 20, 2018, ALJ Seideman issued Order No. 18-UI-111690, dismissing claimant's request for hearing on decision # 92517 for failure to appear. On July 23, ALJ Shoemake conducted a hearing on decision # 194065, at which claimant appeared. Also on July 23, 2018, claimant filed a late request to reopen the June 20, 2018 hearing that did not include a statement explaining why claimant filed the request late. On July 26, 2018, ALJ Kangas considered claimant's request to reopen and issued Order No. 18-UI-113870, denying the request. On July 31, 2018, ALJ Shoemake issued Order 18-UI-114103 affirming decision # 194065. On August 4, 2018, claimant filed an application for review of Order Nos. 18-UI-113870 and 18-UI-114103 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-113870 and 18-UI-114103. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0763 and 2018-EAB-0764).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 18-UI-113870 is **adopted**. Claimant's request to reopen the June 20, 2018 hearing on decision # 92517 is denied. The remainder of this decision focuses only on the overpayment and penalties assessed in decision # 194065.

FINDINGS OF FACT: (1) On May 26, 2017, Meduri Farms, Inc. told claimant it would not permit claimant to continue working for it. Exhibit 1 at 18. Claimant believed Meduri Farms, Inc. had discharged him.

(2) On November 7, 2017, claimant filed an initial claim for unemployment insurance benefits establishing a weekly benefit amount of \$141. When claimant filed his initial claim, an English-speaking Department representative asked claimant questions about prior work separations. Claimant attempted to tell the representative, partially through a Spanish-speaking interpreter, that he no longer worked for Meduri Farms, Inc., and why. The Department representative misunderstood claimant as stating that he was laid off from Meduri Farms, Inc. due to a lack of work. After speaking with Meduri Farms, Inc., the Department determined that claimant voluntarily left work. Exhibit 1 at 13.

(3) The Department initially determined that claimant was entitled to benefits, gave claimant waiting week credit for the period of November 5 through November 11, 2017, and paid claimant \$141 per week for the periods from November 12 through November 18, 2017, December 10 through December 30, 2017, and January 7 through May 5, 2018. For those periods, the Department paid claimant \$2,961 total in benefits based on his weekly claims.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid benefits totaling \$2,961 but disagree with the ALJ's conclusion that claimant is liable to repay the Department for the overpaid benefits. We instead conclude that claimant is liable only to have the overpayment deducted from future benefits otherwise payable. EAB further concludes that claimant is not subject to penalty weeks or a monetary penalty.

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.

An individual who willfully made a false statement or misrepresentation to obtain benefits may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. In addition, an individual who has been disqualified for benefits under ORS 657.215 is 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). 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.

The Department paid claimant \$2,961 in unemployment insurance benefits for the periods from November 12 through November 18, 2017, December 10 through December 30, 2017, and January 7 through May 5, 2018. As a matter of law, however, claimant was disqualified from receiving benefits for those weeks because decision # 92517 found that claimant voluntarily left work with Meduri Farms

without good cause. The ALJ concluded that claimant was overpaid benefits because he reported to the Department that he had been laid off from Meduri Farms, Inc. due to lack of work,¹ and thus is liable to repay the amount of the overpayment to the Department under ORS 657.310.² EAB disagrees and concludes that claimant is instead liable to have the overpayment deducted from future benefits otherwise payable under ORS 657.315 because the record shows that the overpayment did not result from claimant providing a false statement or misrepresentation of a material fact. Claimant spoke with an English-speaking Department representative, in part through a Spanish-speaking interpreter, and the preponderance of the evidence shows that claimant stated facts that the interpreter and/or representative misinterpreted as claimant stating that he had been laid off due to a lack of work. The record does not show that claimant misrepresented facts to the Department. Claimant stated that he no longer worked for Meduri Farms, Inc., which was true. After the Department spoke with the employer, it determined that claimant had voluntarily left work. Claimant did not report to the Department that he quit a job with Meduri Farms, Inc. It is more probable than not that the initial failure to determine that claimant quit was due to the Department's misunderstanding of claimant's statements, and not due to factual misrepresentations by claimant.

The ALJ also concluded in Order No. 18-UI-114103 that claimant was subject to penalty weeks and a monetary penalty because he willfully failed to accurately report his work separation with Meduri Farms, Inc. to receive unemployment benefits.³ EAB disagrees with the ALJ's conclusion that claimant willfully misrepresented his work separation to obtain benefits. At hearing, claimant testified that he spoke with the Department and answered the questions asked of him based on his understanding of his work separation, that the employer would no longer permit him to continue working after he missed work for multiple days due to a family situation. Transcript at 17, 21. Based on his statements, the Department reported that claimant disclosed he was laid off due to lack of work. We find it more probable than not that claimant accurately reported the events leading to his work separation to the Department based on the questions asked of him by the representative through the interpreter. The Department failed to establish that claimant willfully misreported that he was laid off due to lack of work and had not quit a job to obtain benefits. Claimant therefore is not disqualified from future benefits or liable for a monetary penalty based on a false report.

In sum, claimant received \$2,961 in benefits to which he was not entitled, and which he is liable to have deducted from any future benefits otherwise payable to him under ORS chapter 657. Claimant is not disqualified from future benefits or liable for a monetary penalty.

DECISION: Order No. 18-UI-113870 is affirmed. Order No. 18-UI-114103 is modified, as outlined above. *La Orden No. 18-UI-113870 esta afirmada. La Orden No. 18-UI-114103 se modifica, de acuerdo a lo indicado arriba.*

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

¹ Order No. 18-UI-114103 at 2.

² *Id.* at 4.

³ *Id.*

DATE of Service: September 6, 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.

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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

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