

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0930**

*Affirmed*  
*Overpayment and Penalties*

**PROCEDURAL HISTORY:** On August 3, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an \$870 overpayment that claimant was required to repay, a \$130.50 monetary penalty and 6 penalty weeks (decision # 194138). Claimant filed a timely request for hearing. On September 7, 2018, ALJ Janzen conducted a hearing, and on September 10, 2018 issued Order No. 18-UI-116278, affirming the Department's decision. On September 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On December 21, 2014, December 28, 2014 and February 22, 2015, during prior claims, claimant participated in a UI Basics Review. The review required claimant to identify when she was supposed to report her earnings if she was not paid for two weeks. Claimant correctly answered that question twice, indicating that she was required to report her earnings when they were earned and not when she was paid. She incorrectly answered the question one time in 2015; when claimant answered the question incorrectly, the system informed her of the correct answer.

(2) On April 28, 2017, claimant filed a new initial claim for unemployment insurance benefits. Claimant's weekly benefit amount was \$435. The maximum weekly benefit amount in effect at the time was \$590.

(3) On July 30, 2017, claimant participated in a UI Basics Review again. The review again required claimant to identify when she was supposed to report her earnings if she started a job but was not paid

for two weeks. Claimant answered the question correctly, that she was required to report the earnings during the week she had earned them, not the week she was paid.

(4) Prior to March 4, 2018, claimant worked for employer Tara Kangas at a rate of \$14.50 per hour. On March 5, 2018, claimant began working for Providence, too, at a rate of \$17.00 per hour.

(5) During the week of March 4, 2018 to March 10, 2018 (week 10-18), claimant performed 40 hours of work for Providence and earned \$680. She also performed approximately seven hours of work and earned \$110.56 working for employer Tara Kangas.<sup>1</sup>

(6) On March 12, 2018, claimant filed a weekly claim for unemployment insurance benefits for week 10-18. Claimant reported that she had earned \$58, which she based upon her work for Tara Kangas. Claimant did not report any of the hours or earnings based upon her work for Providence.<sup>2</sup>

(7) During the week of March 11, 2018 to March 17, 2018 (week 11-18), claimant performed 40 hours of work for Providence and earned \$680. She also performed approximately one hour of work and earned \$14.50 working for Tara Kangas.<sup>3</sup>

(8) On March 19, 2018, claimant filed a weekly claim for unemployment insurance benefits for week 11-18. Claimant reported that she had earned \$58, which she based upon her work for Tara Kangas.<sup>4</sup> Claimant did not report any of the hours or earnings based upon her work for Providence. Claimant certified to the Department during both weeks 10-18 and 11-18 that her reports about her hours and earnings were true and accurate to the best of her knowledge.

(9) Based upon claimant's reports about her work and earnings, the Department paid claimant \$870 in unemployment insurance benefits. Had claimant accurately reported her hours of work and earnings during weeks 10-18 and 11-18, the Department would not have paid claimant benefits.

**CONCLUSIONS AND REASONS:** Claimant is liable to repay the \$870 overpayment and for misrepresentation penalties.

Only unemployed individuals are eligible to receive benefits with respect to any week. ORS 657.155(1). An individual is "unemployed" in any week only if the individual performs no services, "or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount." ORS 657.100.

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<sup>1</sup> No party specified how many hours claimant worked during each of the weeks at issue, but the record included her hourly rate of pay and gross weekly earnings each week. Mathematically, an individual earning \$14.50 per hour, whose gross weekly earnings totaled \$110.56, more likely than not worked 7.62 hours during that week.

<sup>2</sup> No party specified how many hours worked claimant reported to the Department when she filed each of the weekly claims at issue.

<sup>3</sup> An individual earning \$14.50 per hour, whose gross weekly earnings totaled \$14.50, more likely than not worked 1 hour during that week.

<sup>4</sup> No party specified how many hours worked claimant reported to the Department when she filed each of the weekly claims at issue.

During week 10-18, claimant worked approximately 47 hours for two employers and earned \$790.56. During week 11-18, claimant worked approximately 41 hours for two employers and earned \$694.50. Because claimant did not work less than full time during weeks 10-18 and 11-18, and the remuneration payable to her for the work she performed during each of those weeks exceeded her weekly benefit amount, claimant was not “unemployed” during either week. She is, therefore, not eligible to receive unemployment insurance benefits for either week.

The Department paid claimant \$435 in unemployment insurance benefits for each of the weeks at issue, for a total of \$870. Because claimant was not unemployed and not eligible to receive benefits, claimant was overpaid.

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, 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.

The Department overpaid claimant \$870 in benefits because claimant failed to disclose to the Department when she filed her weekly claims for weeks 10-18 and 11-18 that she had worked over 40 hours a week, and because she failed to disclose the full amount of her earnings each week. Regardless of claimant’s knowledge or intent, because the overpayment occurred due to claimant’s failure to disclose information to the Department she is liable to repay the overpaid benefits to the Department or have the amount deducted from future benefits otherwise payable to her.

An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact 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 for making a willful misrepresentation is liable for a monetary penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

Claimant’s failure to report the true extent of her work and earnings during weeks 10-18 and 11-18 were material to her eligibility to receive benefits under the applicable laws and rules. Although claimant argued that her failure to report her work and earnings was the result of “get[ting] my work weeks mixed up, and . . . pay periods,” and that she did not deserve to be penalized because the mistake “wasn’t intentional on my part,” the preponderance of the evidence suggests that is not the case. Audio recording at ~ 28:30, 28:55.

When asked by the ALJ to explain how she got her weeks mixed up, claimant responded, “I don’t know, I can’t think back that far.” *Id.* at ~ 29:20. Nor did claimant allege during the Department’s investigation that she had made such an error. Rather, claimant reported to the Department that she “thought she could still file a claim,” and “thought since she had not been paid [by Providence] she could still do that.” *Id.* at ~ 15:15, 15:30. Claimant confirmed that belief during the hearing, as well, testifying that she did not report her Providence work and earnings because she “thought I could claim while working.” *Id.* at ~ 28:30. She also testified that she was aware that she was supposed to report her work and earnings in the week she did the work, and did not know why she did not, testifying, “It

appears I did make a mistake, and I'm sorry for that, and um that's all I have to say. It's not something that I wanted to do, or, um needed to even do. So. That – that's all.” *Id.* at ~ 30:05, 30:20-31:10.

The evidence therefore does not show that claimant failed to report her Providence hours and earnings because she made a mistake about the proper weeks in which to report them. Although claimant's belief that she “could still file a claim” was reasonable – and true – she did not allege or show why such a belief would justify or explain her decisions to falsely withhold information about her hours of work and earnings when making those claims, particularly where, as here, the Department specifically asked her to disclose that information and admonished her to do so accurately.

Claimant also failed to accurately report her hours and earnings from her employment with Tara Kangas. Claimant reported during each of the weeks at issue that she had earned \$58. At \$14.50 per hour, \$58 equates to four hours of work. Claimant actually worked over seven hours for Tara Kangas during week 10-18, and earned over \$110 for that work. Seven hours is a significant segment of time, particularly in the context of claimant's 40 hours of work for Providence. It is implausible that claimant would not have known on March 12, 2018, when she claimed benefits for week 10-18, that in addition to her 40 hours of work for Providence she had also worked an additional seven hours for her other employer. She actually worked only one hour for Tara Kangas during week 11-18, but instead reported working significantly more hours. It is, again, implausible that claimant would not have known she actually worked significantly fewer hours than she reported when she claimed benefits, particularly given that her hours for Tara Kangas varied week-to-week. Audio recording at ~ 32:00. It is therefore more likely than not that claimant willfully made inaccurate reports about her hours and earnings from Tara Kangas during the weeks at issue.

Based upon claimant's testimony and the totality of the circumstances, it is more likely than not that claimant knew she was required to accurately report her work and earnings during the weeks in which she performed the work, not the week she was paid. It is also more likely than not that she willfully failed to report her hours and earnings from Providence and inaccurately reported her hours and earnings from Tara Kangas because of her desire to continue getting paid unemployment insurance benefits until Providence paid her for her work. Claimant therefore willfully failed to report material facts about her hours and earnings in order to obtain benefits, and she is subject to misrepresentation penalties.

The length of the penalty disqualification period is determined by applying the provisions of OAR 471-030-0052(1)(a) (January 11, 2018), which provides, in pertinent part:

When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be 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 of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four rounding it up to the nearest whole number.

\* \* \*

The total amount of benefits overpaid to claimant was \$870. \$870 divided by \$590, the maximum weekly benefit amount in effect at the time of claimant's initial claim, equals 1.47. 1.47 multiplied by 4

equals 5.88, rounded up to the nearest whole number equals 6. Claimant is therefore liable for six penalty weeks based upon her willful misrepresentations in this case.

The monetary penalty is determined by establishing how many occurrences of misrepresentation occurred and applying the provisions of OAR 471-030-0052(7)(a), which provides, in pertinent part:

For the first or second occurrence within 5 years of the occurrence for which a penalty is being assessed, 15 percent of the total amount of benefits the individual received but to which the individual was not entitled.

\* \* \*

In this case, claimant engaged in two occurrences of misrepresentation, one on March 12, 2018 when she failed to report her hours and earnings from Providence and underreported her hours and earnings from Tara Kangas, and the second on March 18, 2018 when she failed to report her hours and earnings from Providence and inaccurately reported her hours and earnings from Tara Kangas. Claimant is therefore liable for a monetary penalty equal to 15% of her overpayment amount. 15% of \$870 equals \$130.50, which claimant is liable to pay to the Department.

In sum, claimant was overpaid \$870, which she is liable to repay or have deducted from future benefits otherwise payable. She is also liable to repay a \$130.50 monetary penalty and assessed 6 penalty weeks.

**DECISION:** Order No. 18-UI-116278 is affirmed.

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

**DATE of Service:** October 30, 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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