

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0977

Order No. 18-UI-117476 Reversed ~ No Disqualification
Order No. 18-UI-117548 Modified ~ No Overpayment, No Monetary Penalty, 4 Penalty Weeks

PROCEDURAL HISTORY: On August 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 104017). On August 30, 2018, the Department served notice of another administrative decision assessing a \$493 overpayment, \$73.95 monetary penalty, and 4 penalty weeks (decision # 193849). Claimant filed timely requests for hearing on both decisions. On September 26, 2018, ALJ Murdock conducted two hearings. On October 1, 2018, the ALJ issued Order No. 18-UI-117476, affirming decision # 104017. On October 2, 2018, the ALJ issued Order No. 18-UI-117548, affirming decision # 193849. On October 5, 2018, claimant filed applications for review of both Orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-117476 and 18-UI-117548. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0977 and 2018-EAB-0978).

FINDINGS OF FACT: (1) Temco Engineered Products, Inc. employed claimant from August 11, 2014 to August 10, 2018.

(2) Claimant experienced domestic violence by her boyfriend. Claimant's boyfriend knew where she lived and worked, and knew where her mother lived. Claimant felt she could not leave the domestic violence situation if she remained in the Portland area. She decided to leave her home, her job, and lose everything to remove herself from the area.

(3) On August 10, 2018, claimant contacted the human resources manager to quit her job. The human resources manager told claimant at that time that there was not a lack of work. Claimant then moved to central Oregon to live with relatives in order to separate herself from the domestic violence.

(4) On August 13, 2018, claimant filed an initial claim for unemployment insurance benefits.

(5) When claimant filed her initial claim, the Department's online claim system required claimant to disclose her separation from Temco by selecting from a drop-down multiple choice menu that included three options: "discharged/fired/terminated," "voluntary quit/resigned," and "layoff due to a permanent lack of work." Claimant selected the third option, "layoff due to a permanent lack of work."

(6) At the time claimant selected "layoff due to a permanent lack of work," claimant knew that she had actually quit work. Claimant certified to the Department under penalty of perjury that her answer was correct, even though she knew it was not.

(7) After filing her initial claim, claimant had another conversation with the human resources manager during which claimant told the manager she had reported the work separation as a layoff on her initial claim form. The manager told claimant that she should contact the Department to fix the report. Claimant had many subsequent contacts with the Department, but did not disclose the true nature of her work separation during any of those contacts.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant voluntarily left work with good cause. Claimant therefore was not overpaid and may not be subjected to a monetary penalty; however, claimant is liable for a four-week penalty disqualification from benefits otherwise payable for making a willful misrepresentation to obtain benefits.

Voluntary Leaving. ORS 657.176(2)(c) provides that an individual may be disqualified from receiving benefits if they voluntarily left work without good cause. OAR 471-030-0038(5)(g) defines "good cause" to include "compelling family reasons." OAR 471-030-0038(1)(e) defines "compelling family reasons" to include domestic violence that "causes the individual reasonably to believe that the individual's continued employment would jeopardize the safety of the individual." "Domestic violence" means, among other things, physical injury or threat thereof by a person who has or has had a significant relationship with the individual to the extent that the person's health, safety or welfare is harmed or threatened thereby. OAR 471-030-0150(2).

Notwithstanding ORS 657.176(2), ORS 657.176(12) provides that "[a]n individual may not be disqualified from receiving benefits" if they are "a victim of domestic violence . . . or the individual believes that the individual . . . could become a victim of domestic violence" and "[t]he individual leaves work . . . in order to protect the individual . . . from domestic violence . . . that the individual reasonable believes will occur as a result of the individual's continued employment . . ."

The ALJ concluded that claimant voluntarily quit work without good cause. Order No. 18-UI-117476 at 2. The ALJ found as fact that, prior to quitting work, claimant "did not notify law enforcement of any of his [her boyfriend's] offenses and did not seek a protective or restraining order to keep him away from her," that her mother's residence in Vancouver "was within commuting distance of her job," and that the employer "would have permitted her to take a leave of absence," but that claimant "decided to move" to a location too far away from her job to permit her to continue working. *Id.* at 1. The ALJ reasoned that because claimant "did not assert or suggest that continuing to work for the employer would jeopardize her safety or that a protective order could not be extended to her work location" she had "reasonable alternatives to quitting work" and therefore left work without good cause. *Id.* at 3. We disagree.

The ALJ erroneously analyzed claimant's decision to leave work using OAR 471-030-0038(4), which, in brief, defines "good cause" for leaving work as a situation of such gravity that an individual has no reasonable alternative but to leave work. That standard does not apply to domestic violence situations. Under the applicable laws and rules, an individual who quits work due to domestic violence is not required to pursue reasonable alternatives to leaving work. The only questions are whether claimant experienced domestic violence, and whether she had a reasonable belief domestic violence will occur as a result of her continued employment or that her continued employment would jeopardize her safety. It is therefore irrelevant whether claimant reported her boyfriend's abuse to the police or sought a protective or restraining order.

There is no dispute in this record that claimant experienced domestic violence. The only question is therefore whether she had a reasonable belief that violence would occur as a result of her continued employment or that her continued employment would jeopardize her safety. The ALJ concluded that claimant did not, because "she did not assert or suggest that continuing to work for the employer would jeopardize her safety." The ALJ's statement is not based upon substantial evidence. Claimant testified at the hearing that her abusive boyfriend knew where she and her mother lived and had to leave the area to end the abuse. Claimant was concerned enough about additional violence at the hands of her boyfriend that she felt the only course of action available to her was to leave the area, even though doing so required her to quit her job, leave her home, leave the proximity of her mother, and lose everything. The only reasonable inference that can be drawn from those circumstances is that claimant had a sincere and reasonable belief that continuing to reside and work in the Portland area would jeopardize her safety or subject her to further domestic violence from her boyfriend. Therefore, although claimant might not have explicitly stated as much during the hearing, the preponderance of the evidence in this record suggests that was the basis for claimant's decision to leave everything she had to move away from her abusive boyfriend. Claimant therefore established it is more likely than not that she quit work with good cause. She may not be disqualified from receiving unemployment insurance benefits because of her work separation.

Overpayment. 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.

The Department assessed an overpayment based upon its conclusion that claimant should be disqualified from benefits because of her work separation from Temco, and the ALJ agreed. The Department therefore concluded, and the ALJ agreed, that claimant was overpaid \$493 and required to repay the overpayment to the Department. Based on our decision in that matter, as set forth above, claimant was *not* subject to disqualification from benefits. She therefore was not overpaid, and she is not required to repay benefits to the Department.

Monetary Penalty. ORS 657.310(2) provides that an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment.

The Department assessed a \$73.95 monetary penalty in this case, and the ALJ agreed. However, the establishment of a monetary penalty amount depends entirely upon the existence of an overpayment, because the penalty is based upon a percentage of an overpayment amount. In this case, claimant was

not overpaid. Regardless whether or not she is determined to have made a willful misrepresentation under ORS 657.215, claimant therefore cannot be assessed a monetary penalty and is not required to repay a monetary penalty to the Department.

Penalty Weeks. ORS 657.215 requires that an individual be disqualified from receiving benefits for up to 52 weeks if the individual “willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain any benefits under this chapter.” The Department assessed a four-week penalty in this case, and the ALJ agreed, reasoning that although claimant alleged the “only option she saw” when reporting the nature of her work separation to the Department was “the ‘lack of work’ option,” “her testimony is simply not credible” because she knew she had not been laid off work when she reported to the Department that she had. Order No. 18-UI-117548 at 4. We agree.

Claimant intentionally reported to the Department that she had been laid off work by the employer, even though she knew and had specifically been told that she had not. It is more likely than not that she did so to complete her initial claim filing with the intent of obtaining benefits. She therefore willfully made a false statement or misrepresentation (falsely reporting a layoff), or willfully failed to report a material fact (her voluntary leaving), to obtain benefits, and a disqualification penalty must be assessed.

OAR 471-030-0052(1)(b) provides that “[w]hen the disqualification penalty is imposed because the disqualifying act . . . relates to the provisions of 657.176, the number of weeks of disqualification shall be” the greater of the result of a calculation set forth in OAR 471-030-0052(1)(a) “or four weeks.” The calculation set forth in OAR 471-030-0052(1)(a) is based upon the existence of an overpayment. Because claimant was not overpaid in this case, the calculation does not apply. The appropriate disqualification penalty is, therefore, four weeks. Claimant is therefore assessed a disqualification penalty for misrepresenting her work separation to the Department when she filed her initial claim, and disqualified from four weeks of future benefits that are otherwise payable.

DECISION: Order No. 18-UI-117476 is set aside, and Order No. 18-UI-117548 is modified, as outlined above.

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

DATE of Service: November 8, 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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