

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0495

Affirmed
Overpayment and Penalties Assessed

PROCEDURAL HISTORY: On April 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an \$876 overpayment, a \$219 monetary penalty and 6 penalty weeks (decision # 193910). Claimant filed a timely request for hearing. On May 9, 2019, ALJ Monroe conducted a hearing, and on May 17, 2019 issued Order No. 19-UI-130150, affirming the Department's decision. On May 29, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On January 3, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant's claim was valid with a weekly benefit amount of \$146. The maximum weekly benefit amount at the time claimant filed his claim was \$624.

(2) Claimant claimed and was paid benefits for the weeks including January 27 through March 9, 2019 (weeks 05-19 through 10-19), the weeks at issue. When filing his claims for each of those weeks, claimant certified to the Department that he had worked no hours and received no earnings. He also certified to the Department that his reports were true and accurate.

(3) However, on January 28, 2019, Dungarvin Oregon, LLC hired claimant to work as a direct support professional on part-time basis. During week 05-19, claimant worked 22 hours and earned \$286.00; during week 06-19, claimant worked 14.75 hours and earned \$191.75; during week 07-19, claimant worked 18 hours and earned \$234.00; during week 08-19, claimant worked 33.75 hours and earned \$438.75; during week 09-19, claimant worked 21.50 hours and earned \$279.50; and during week 10-19, claimant worked 36.75 hours and earned \$477.75. When claimant certified to the Department that he had worked no hours and received no earnings during the weeks claimed, claimant knew he had he had worked and had earnings during each of those weeks.

(4) Based on claimant's false certifications to the Department about his work and earnings, the Department paid claimant \$146 in benefits for each week claimed, or a total of \$876 in benefits he was not entitled to receive.

CONCLUSIONS AND REASONS: Claimant is assessed an \$876 overpayment and a \$219 monetary penalty which he is liable to repay to the Department or have deducted from any future benefits otherwise payable to him. Claimant is also assessed 6 weeks of penalty disqualification.

Overpayment. ORS 657.100(1) provides that an individual is deemed “unemployed” in any week if, among other things, the amount that the individual earned from work during that week is less than the individual’s weekly benefit amount. ORS 657.155(1) provides that only “unemployed” individuals may receive benefits. 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 did not dispute that he had the earnings set out in the findings of fact during the weeks at issue, nor that, when he made his weekly claim reports, he certified to the Department that he had worked no hours and had no earnings. Because claimant earned more than his weekly benefit amount of \$146 during each of the weeks at issue, he was not considered “unemployed,” and was not eligible to receive any benefits for those weeks. The Department would not have paid the \$876 in benefits to claimant during the weeks at issue had he accurately reported that he had earnings that exceeded his weekly benefit amount. Regardless of claimant’s knowledge or intent, he received \$876 in benefits to which he is not entitled because the hours and earnings information he provided to the Department were false statements of material facts. Claimant therefore is liable to repay the \$876 he received to the Department or to have that amount deducted from any future benefits otherwise payable to him.

Misrepresentation. ORS 657.215 and ORS 657.310(2), read together provide that, if an individual has received any benefits to which the individual is not entitled because the individual has willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits, the individual is liable to pay a monetary penalty and to have a penalty period of benefit disqualification imposed.

Claimant asserted at hearing that he falsely reported that he had no work or earnings during each of the weeks at issue because he had been “instructed” by an unnamed Department representative on an unspecified date at the Hillsboro WorkSource Oregon office that even though he was working part-time for an employer he should “continue to file exactly as I did previously,” which he understood to mean that he should not report his hours and earnings. Audio Record ~ 27:00 to 34:00. Claimant essentially contended that because he received that “instruction,” he did not report his work hours and earnings and for that reason the Department should be estopped from imposing an overpayment and penalties because the reason he filed his claims as he did was that he relied on misinformation from a Department employee.

The doctrine of equitable estoppel “requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it.” *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party “must have relied on the agency’s representations and the party’s

reliance must have been reasonable.” *State ex rel SOS v. Dennis*, 173 Or App 604, 611, 25 P3d 341, rev den, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

Claimant did not establish that he received a false representation from the WorkSource Oregon employee. Claimant did not assert or show that the employee in question knew that claimant previously had not been reporting hours and earnings when filing his claims when that employee allegedly told claimant to “continue to file exactly as [he] did previously,” and admitted on cross-examination that the employee never told him “to not report his hours and earnings.” Audio Record ~ 35:00 to 36:00. Moreover, claimant did not establish that he even relied on the representation made by the WorkSource Oregon employee in filing his claims without reporting his hours and earnings. Claimant asserted instead that he did not report that information because he “did not want to run the risk of anything happening to his claim.” Audio Record ~ 30:45 to 31:25. Because claimant did not establish that the representation reportedly made by the WorkSource Oregon employee to him was false or relied upon by him, the Department may not be estopped from assessing an overpayment and penalties against claimant based on the alleged misleading instruction given to claimant.

Claimant did not otherwise establish that he was a credible witness. When asked by the ALJ whether he understood that when filing his claim for a particular week, by not reporting his hours and earnings for that week, his responses to the claims questions were not accurate. Rather than answering the question with yes or no claimant evasively asserted, “I did not know what answers to put so that is why I did what I did.” Audio Record ~ 32:30 to 33:30. On March 14, 2019, when asked by a Department representative when he began his latest employment, claimant responded that he began on February 12, 2019, even though he began work on January 28, 2019 and by February 20, 2019, he had received a paycheck for \$441 in wages for 36.75 hours of work between January 27, 2019 and February 9, 2019. Viewing the record as a whole, the preponderance of the evidence shows claimant was not credible and, more likely than not, willfully made false statements or willfully failed to report material facts to obtain benefits when he falsely answered the claims question regarding whether he had work or earnings during any of the weeks at issue. Accordingly, claimant is liable for misrepresentation penalties.

Penalties. ORS 657.310(2) provides that a monetary penalty for willful misrepresentations to obtain benefits shall be between 15 and 30 percent of the benefits the individual received to which the individual was not entitled. OAR 471-030-0052(7) (January 11, 2018) specifies that the monetary penalty assessed for a willful misrepresentation that is made to obtain benefits is a function of the number of occurrences of misrepresentation. An “occurrence” is counted as having occurred each time the individual willfully made a misrepresentation of obtain benefits. OAR 471-030-0052(7).

Here, there are six weeks constituting the weeks at issue, and for each week, claimant willfully failed to report that he had worked and his actual earnings for the week, instead reporting no work or earnings. OAR 471-030-0052(7)(c) states that for six occurrences of misrepresentation, the penalty to be assessed is 25 percent of the total amount of the benefits the individual received to which the individual was not entitled. 25 percent of the \$876 in benefits that claimant received to which he was not entitled is \$219. Accordingly, claimant is assessed a monetary penalty of \$219.

ORS 657.215 provides that 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. OAR 471-030-0052(1)(a) sets out the formula for calculating the weeks of penalty disqualification if the individual willfully failed to report work or earnings to receive benefits.

Applying the formula to this case, the total amount of benefits overpaid to the individual based on the disqualifying acts (\$876) shall be divided by the maximum weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the disqualifying act (\$624), which equals 1.403, then rounding that number off to two decimal places (1.40), multiplying that result by 4 (5.6), and rounding that number up to the nearest whole number, which equals 6 weeks. Claimant is assessed 6 penalty weeks of disqualification from future benefits.

In sum, claimant is required to repay the Department, by deduction from future benefits or otherwise, a total of \$1,095. Claimant is also assessed 6 weeks of penalty disqualification.

DECISION: Order No. 19-UI-130150 is affirmed.

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

DATE of Service: July 2, 2019

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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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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