

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0547

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On April 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$2,135 overpayment, \$640.50 monetary penalty, and 15 penalty weeks (decision # 195572). Claimant filed a timely request for hearing. On June 6, 2019, ALJ Seideman conducted a hearing and issued Order No. 19-UI-131222, affirming the Department's assessment of a \$2,135 overpayment but concluding claimant was not liable for a monetary penalty or penalty weeks. On June 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 4, 2018, claimant filed an initial claim for unemployment insurance benefits. His weekly benefit amount was \$141.

(2) Claimant claimed benefits from August 12, 2018 through August 18, 2018 and August 26, 2018 through December 29, 2018 (week 33-18 and weeks 35-18 through 52-18), the weeks at issue. Each week claimant claimed benefits, he was asked to report whether he had worked as an employee during the week claimed, and, if so, to report his earnings to the Department. At all relevant times, claimant worked part-time for Hands On Chiropractic, LLC as a massage therapist.

(3) Claimant reported to the Department that he had earned \$30.00 during week 33-18. The Department paid him his full weekly benefit amount as a result of his report. Claimant had actually earned \$84.00 that week. The discrepancy in the earnings report did not affect claimant's eligibility to receive his full weekly benefit amount.

(4) Claimant reported to the Department that he had earned \$530.00 during week 35-18. Claimant reported to the Department that he had earned \$250.00 during week 36-18. Because claimant's weekly earnings exceeded his weekly benefit amount the Department did not pay claimant benefits for either week.

(5) Sometime prior to claiming week 37-18, claimant had a conversation with a Department employee about entering the Department's self-employment assistance program. The employee filled out

claimant's weekly claim two weeks in a row alongside claimant, without reporting his earnings from part-time employment, and told him to fill out the form the same way going forward. Claimant understood from that conversation that when claiming weekly benefits under the self-employment assistance program, he did not need to report earnings from part-time work, and only needed to report earnings from self-employment.

(6) Claimant did not have self-employment earnings during the weeks at issue. From week 37-18 through 42-18, claimant earned more than his weekly benefit amount based on his part-time employment. During week 43-18, claimant earned \$1.00 less than his weekly benefit amount. During weeks 44-18 through 52-18, claimant earned more than his weekly benefit amount.

(7) When claimant filed weekly claims for benefits for weeks 37-18 through 52-18, he affirmatively reported to the Department that he had not had any employment or earnings. The Department paid claimant \$141 per week for week 33-18 and weeks 37-18 through 52-18, for a total of \$2,135.00.

CONCLUSIONS AND REASONS: Claimant is liable to repay the \$2,135 overpayment to the Department but is not liable for penalties.

Remuneration and overpayment. Only unemployed individuals are eligible to receive benefits in any week. *See* ORS 657.155(1). An individual is "unemployed" "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(1).

During weeks 35-18 through 42-18 and 44-18 through 52-18, claimant earned at least his weekly benefit amount every week. He therefore was not "unemployed" and was not eligible to receive any amount of unemployment insurance benefits during those weeks. The Department paid claimant \$2,115.00 in benefits for those weeks that he was not entitled to receive; he was therefore overpaid \$2,115.00.

During week 43-18, however, claimant earned \$1.00 less than his weekly benefit amount from part-time work. He therefore was "unemployed" during week 43-18 and eligible for benefits, and eligible to receive reduced benefits.

ORS 657.150(6) provides that "[a]n eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced by the amount of earnings paid or payable that exceeds" the greater of ten times the state minimum wage or one-third the individual's weekly benefit amount.

The minimum wage in 2018 was \$12.00 per hour; ten times \$12.00 is \$120.00.¹ One-third of claimant's weekly benefit amount is \$47.00. \$120.00 is greater than \$47.00. Claimant's weekly benefit amount therefore must be reduced by the amount of his earnings that exceeded \$120.00.

¹ EAB has taken notice of the minimum wage, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.oregon.gov/boli/WHD/OMW/Pages/Minimum-Wage-Rate-Summary.aspx>. Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

Claimant earned \$140.00. \$140.00 minus \$120.00 equals \$20.00. Claimant's weekly benefit amount must therefore be reduced by \$20.00. Claimant's weekly benefit amount, \$141.00, minus \$20.00, equals \$121.00; claimant's reduced weekly benefit amount is therefore \$121.00. The Department paid claimant \$141.00. Claimant therefore was overpaid \$20.00 for week 43-18.

Repayment. 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.*

The total amount of benefits the Department overpaid to claimant was \$2,135.00. The Department paid those benefits to claimant because he withheld information about his earnings from employment when he claimed weekly benefits for weeks 37-18 through 52-18. Information about claimant's earnings from employment was material to claimant's eligibility to receive benefits. Regardless of claimant's knowledge or intent in withholding information about facts material to his claims for benefits, claimant is liable to repay the amount of the overpaid benefits to the Department or have them deducted from future benefits otherwise payable.

Misrepresentation and penalties. 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 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 false statements were not made willfully. Rather, he understood from conversations he had with a Department employee, and from that employee's examples filling out two weekly claim reports, that he did not need to report his income from part-time work when claiming benefits through the self-employment assistance program. Had claimant not held that understanding, he likely would not have made false reports to the Department. Because claimant did not willfully make false statements to the Department to obtain benefits, he is not liable for misrepresentation penalties.

Estoppel. Claimant argued at the hearing that he should not be held liable to repay the overpayment, or at least not the full amount of the overpayment, because he made his claims in reliance upon misinformation he received from a Department employee. Claimant's argument is, in essence, that the Department should be estopped from collecting the overpayment, or at least a part of it, because the overpayment was caused by a Department employee's error.

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 SOSOC 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)).

In order for estoppel to apply, claimant's reliance on the Department employee's representations must have been reasonable. In this case, it was not. While there is no evidence contradicting claimant's description of the misleading information the Department employee gave him about reporting his part-time employment when claiming benefits, that was not the only information claimant received about claiming. Specifically, each week claimant claimed benefits he was required to answer a question stating whether or not he had performed work as an employee. Claimant chose to answer that question denying that he had worked, and did not report his earnings, even though he knew that he had actually worked part-time and had earnings from work as an employee each week, and knew that his answer was false. It was not reasonable for claimant to rely upon a statement by one employee, ostensibly instructing him to lie on his weekly claim reports, when the very existence of the employment question on the weekly claim reports suggested that the Department did in fact require him to report that information, and that the employee had not given claimant accurate information. Because claimant's reliance on the Department employee's false representation was not reasonable, the Department is not estopped from requiring claimant to repay the full amount of the overpayment or have it deducted from future benefits otherwise payable.

Conclusion. In sum, claimant is liable to repay \$2,135.00 to the Department or have it deducted from future benefits otherwise payable. He is not liable for a monetary penalty or penalty weeks, however, and the Department is not estopped from pursuing collection of the overpaid benefits.

DECISION: Order No. 19-UI-131222 is affirmed.

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

DATE of Service: July 17, 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 desisyon.

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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