

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1258

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On December 27, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$307 overpayment (decision # 194020). Claimant filed a timely request for hearing. On July 8, 2014, ALJ Wipperman conducted a hearing, and on July 15, 2014 issued Hearing Decision 14-UI-21532, affirming the Department's decision. On July 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In his request for hearing and in his written argument to the EAB, claimant argued he was not overpaid benefits, and was entitled to the benefits he received. He argued that the \$307 overpayment was assessed out of confusion arising during his phone call to the Department at the restart of his claim during week 41-13, October 6, 2013 to October 12, 2013 and "because someone is not understanding what's being said." OAR 471-030-0017(3)(a) provides that for purposes of ORS 657.100 and 657.150(6) remuneration shall be allocated to the week in which the service was performed. During the hearing claimant did not dispute the employer paid him \$562 in remuneration for week 42-13, October 13, 2013 to October 19, 2013, nor that the Department paid him \$307 in benefits for that week. However, claimant's actual earnings exceeded his weekly benefit amount, making him ineligible for the benefits he was paid, and creating a \$307 overpayment. Claimant reported earning \$112.40 for that week, which was a lesser amount than he actually earned. Based on that certification, the Department overpaid claimant \$307. Irrespective of the issue of whether claimant wanted earlier earnings applied to a different week, he earned \$562 for that week. We agree with the ALJ and accept claimant's testimony regarding his lawfulness of purpose. However, ORS 657.310 (1)(a) and (b) requires repayment of the overpayment or to have the amount deducted from any future benefits otherwise payable to claimant "regardless of the individual's knowledge or intent".

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-21532 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: August 6, 2014

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 website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.