

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0614**

*Affirmed*  
*Ineligible*  
*Overpayment*

**PROCEDURAL HISTORY:** On January 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from November 22, 2015 to December 19, 2015 (decision # 90112). On February 1, 2016, decision # 90112 became final without claimant having filed a request for hearing. On February 18, 2016, the Department served notice of another decision based on decision # 90112, concluding the Department overpaid claimant \$1,232 in benefits (decision # 134801). On March 9, 2016, claimant filed a late request for hearing on decision # 90112 and a timely request for hearing on decision # 134801. On March 14, 2016, ALJ Kangas issued Hearing Decision 16-UI-54943, dismissing claimant's request for hearing on decision # 90112 subject to claimant's right to renew her request by responding to an appellant questionnaire by March 28, 2016. On March 31, 2016, the Office of Administrative Hearings (OAH) received claimant's response.<sup>1</sup> On April 13, 2016, OAH mailed notice of two hearings scheduled for April 27, 2016. On April 27, 2016, ALJ Vincent conducted two hearings, and on May 5, 2016 issued Hearing Decision 16-UI-58965, allowing claimant's late request for hearing on decision # 90112 and concluding claimant was not available for work from November 22, 2015 to December 19, 2015, and Hearing Decision 16-UI-38963, affirming decision # 134801. On May 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-58963 and 16-UI-58965. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0613 and 2016-EAB-0614).

No adversely affected party requested review of the portion of Hearing Decision 16-UI-58965 concluding claimant had good cause for the late request for hearing. We therefore confined our review to the issues of claimant's availability and overpayment.

<sup>1</sup> For unknown reasons, OAH considered claimant's response despite receiving it three days after the deadline passed. No adversely affected party has objected to OAH's having done so.

**FINDINGS OF FACT:** Claimant filed weekly claims for benefits from November 22, 2015 to December 19, 2015. The Department paid claimant \$1,232 in unemployment insurance benefits based in part on claimant's report that she was available for work during those weeks. The Department subsequently determined that claimant was not available for work, as shown in decision # 90112, and was therefore ineligible to receive those benefits. Decision # 90112 became final on February 1, 2016.

**CONCLUSIONS AND REASONS:** We have reviewed the entire hearing record concerning decision # 90112 and Hearing Decision 16-UI-58965 (the availability case). On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 16-UI-58965 is **adopted**. We have also reviewed the entire hearing record concerning decision # 134801 and Hearing Decision 16-UI-58963 (the overpayment case). We agree with the ALJ that claimant was overpaid and is liable to repay \$1,232 in benefits for the reasons that follow.

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.*

As a matter of law, claimant was not available for work during the weeks at issue – the Department determined she was not available in decision # 90112, which became final on February 1, 2016, and claimant's late request for hearing has been dismissed at every level of administrative review. Claimant received \$1,232 in unemployment insurance benefits during the weeks she was not available for work, and she was not eligible to receive them. She received the benefits because she reported to the Department that she was available for work, although the Department subsequently concluded that she was not. Regardless of claimant's knowledge or intent when reporting that she was available for work, she caused the overpayment by erroneously reporting her availability, and is therefore liable to repay the \$1,232 overpayment to the Department.

**DECISION:** Hearing Decisions 16-UI-58963 and 16-UI-58965 are affirmed.

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

**DATE of Service:** June 1, 2016

**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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