

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0907**

*Affirmed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On March 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 90728) concluding claimant did not actively seek work during the weeks of January 24, 2016 through February 20, 2016 (weeks 4-17 through 7-16). On April 12, 2016, decision # 90278 became final without a request for hearing having been filed. On May 3, 2016, the Department served notice of an administrative decision (# 125734) assessing an overpayment of \$1,619 based on decision #90728. On May 23, 2016, decision # 125734 became final without a request for hearing having been filed. On May 24, 2016, claimant filed a request for hearing on decision #125734. On June 2, 2016, ALJ Kangas issued Hearing Decision 16-UI-60872, dismissing claimant's request for hearing as untimely, subject to claimant's right to renew the hearing request by responding to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. By letter dated June 23, 2016, OAH cancelled Hearing Decision 16-UI-60872. On July 14, 2016, ALJ Menegat conducted a hearing and issued Hearing Decision 16-UI-63799, allowing claimant's late request for hearing and affirming administrative decision #125734. On August 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

Since no adversely affected party sought review of that part of Hearing Decision that allowed claimant's untimely request for hearing, EAB confined its review to the matter of the overpayment.

**FINDINGS OF FACT:** (1) On December 19, 2015, claimant filed an initial claim for benefits. That claimant was determined valid with a weekly benefit amount of \$509.

(2) Claimant claimed benefits for the weeks of January 24, 2016 through February 20, 2016 (weeks 04-16 through 07-16), the weeks at issue. For those weeks, the Department paid claimant a total of \$1,619 in benefits based on the earnings he reported.

**CONCLUSIONS AND REASONS:** Claimant was overpaid \$1,619 in benefits to which he was not entitled, and is liable to repay those benefits to the Department or to have them deducted from any future benefits otherwise payable to him.

ORS 657.310(1) provides that an individual who receives benefits to which the individual was not entitled because the individual, regardless of the individual's knowledge or intent, made a false statement or misrepresentation of a material fact, is liable to repay the amount of overpaid benefits or to have that amount deducted from any future benefits otherwise payable to the individual.

Claimant did not dispute at hearing that he was paid \$1,619 in benefits for the weeks at issue. Claimant also did not dispute that he would not have been paid those benefits but for his representations when he made his weekly claim reports that he had satisfied the Department's weekly work seeking requirements. However, administrative decision #90728 became final on April 12, 2016 and it establishes as a matter of law that claimant did not actively seek work during the weeks at issue, and it therefore also establishes as a matter of law that claimant's representations that he actively sought work during the weeks at issue were necessarily false. Even if claimant's intentions were innocent and he did not know he was making false representations to the Department about his work seeking activities during the weeks at issue, he is still liable repay the \$1,619 in benefits he was overpaid under ORS 657.310 or to have the overpaid amount deducted from any future benefits otherwise payable to him.

At hearing and in his written argument, claimant presented facts and arguments in opposition administrative decision #90728 – the decision that underlies the finding that any benefits claimant received for the weeks at issue were overpaid since it concluded claimant was not eligible for benefits during those weeks. However, decision # 90728 is final, and principles of finality preclude EAB from considering claimant's arguments collaterally attacking the correctness of decision # 90728 in this proceeding, which is separate from the proceeding that decision # 90728 commenced. The issues in this proceeding over which EAB currently has jurisdiction are limited to whether claimant was paid benefits during the weeks that decision # 90728 found he was not eligible to receive them, the amount of the benefits so paid and whether the recovery of any overpaid benefits should be by repayment and deduction or only deduction. To the extent claimant wishes to challenge the determination that he was not eligible to receive benefits during the weeks at issue made in decision # 90728, he must do so within the confines of that proceeding. In other words, claimant needs to file a request for hearing on decision # 90728 and ascertain whether that untimely request will be allowed and whether a hearing will be held on the merits of decision #90728.

Claimant was overpaid \$1,619 in benefits for the weeks at issue, and he is liable to repay that amount to the Department or to have it deducted from any future benefits otherwise payable to him.

**DECISION:** Hearing Decision 16-UI-63799 is affirmed.

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

**DATE of Service:** August 26, 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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