

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On May 23, 2016, the Oregon Employment Department (the Department) served three notices of a three administrative decisions, the first concluding claimant was not disqualified for benefits because of an April 22, 2016 job refusal (decision # 105051), the second concluding that claimant was disqualified for benefits because of a March 25, 2016 job refusal (decision # 121849, and the third concluding that claimant was not available for work from March 20, 2016 to May 14, 2016 (decision # 124915). On June 10, 2016, the Department issued notice of a fourth administrative decision concluding that claimant did not actively seek work from February 14, 2016 to May 21, 2016 (decision # 103405). Claimant filed timely requests for hearing on all four decisions.

On June 13, 2016, ALJ Kangas issued Hearing Decision 16-UI-61645, dismissing claimant's request for hearing on decision # 105051 because the decision did not disqualify claimant from benefits and was not adverse to his interests. On June 27, 2016, ALJ Murdock conducted a consolidated hearing on claimant's other three hearing requests. On July 1, 2016, the ALJ issued Hearing Decision 16-UI-63034, in which she agreed with decision # 124915 that claimant was not available for work but modified claimant's ineligibility dates to March 20, 2016 to April 2, 2016, Hearing Decision 16-UI-63035, in which she agreed with decision # 121849 that claimant was disqualified for benefits based on a job refusal in March 2016, and Hearing Decision 16-UI-63038, in which she agreed with decision # 103405 that claimant did not actively seek work but modified claimant's ineligibility dates to February 14, 2016 to April 2, 2016 and April 10, 2016 to May 21, 2016. On July 5, 2016, Hearing Decision 16-UI-61645 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On July 21, 2016, Hearing Decisions 16-UI-63034, 16-UI-63035 and 16-UI-63038 became final without claimant having filed an application for review with EAB.

On August 2, 2016, the Department issued two notices of two additional administrative decisions, based on Hearing Decisions 16-UI-63034, 16-UI-63035 and 16-UI-63038, in which the Department concluded that claimant was overpaid \$2,554 (decision # 131314) and overpaid \$1,675 (decision # 132651), and liable to repay the amount of the overpayments to the Department. Claimant filed timely requests for hearing on both decisions. On August 29, 2016, ALJ Menegat conducted a consolidated hearing, and on August 30, 2016 issued Hearing Decisions 16-UI-66594 and 16-UI-66595, affirming the Department's

decisions. On September 7, 2016, claimant filed timely applications for review of Hearing Decisions 16-UI-66594 and 16-UI-66595 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-66594 and 16-UI-66595. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1044 and 2016-UI-1045).

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

FINDINGS OF FACT: (1) On June 12, 2015, claimant filed an initial claim for unemployment insurance benefits. His weekly benefit amount was \$389. Claimant filed weekly claims for benefits for the weeks of February 14, 2016 to May 7, 2016 (weeks 7-16 to 18-16). The Department paid claimant as follows:

<u>Week</u>	<u>Amount Paid</u>
7-16	\$338
8-16	\$389
9-16	\$389
10-16	\$389
11-16	\$389
12-16	\$389
13-16	\$271
14-16	\$389
15-16	\$290
16-16	\$389
17-16	\$218
18-16	\$389
Total:	<u>\$4,229</u>

(2) During each of the listed weeks claimant was either ineligible for the benefits based on his unavailability for work or failure to actively seek work as required, or disqualified for the benefits based on his March 2016 refusal of an offer of work. During each of the weeks at issue, claimant reported to the Department when claiming that he was available for work, had actively sought work and had not refused any offers of work. The Department paid claimant benefits based on claimant's reports.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid benefits and liable to repay the amount of the overpayment to the Department.

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.*

During the hearing and in his written argument claimant disputed the amount of the overpayment by arguing that decisions that created the overpayment were wrong. However, claimant already disputed those decisions, attended hearings on them, received hearing decisions denying him benefits, and decided not to appeal them. Consequently, Hearing Decisions 16-UI-63034, 16-UI-63035 and 16-UI-63038 became final as a matter of law on July 21, 2016, and conclusively establish for purposes of the cases now before EAB that claimant was not available for work, did not actively seek work, and refused an offer of work without good cause. Because those decisions are final, claimant may not relitigate his eligibility or qualification to receive benefits based on those decisions, and EAB does not have jurisdiction to reach the issues covered therein. This review is, therefore, confined to the overpayment, which, according to ORS 657.310(1), involves two issues: whether or not claimant received the benefits the Department alleged it paid to him for the weeks at issue, and whether or not the Department established that its payment of benefits to claimant occurred because claimant made a false statement or misrepresentation of a material fact (regardless of claimant's knowledge or intent in doing so).

There is no dispute in this matter that the Department paid claimant \$4,229 in benefits during the weeks at issue, or that claimant received the money. Because the Department paid claimant benefits during weeks he was ineligible for or disqualified from receiving them, claimant was overpaid, and the amount of the overpayment was \$4,229 (\$2,554 + \$1,675).

The Department paid claimant based on his weekly claim responses that he was available for work, actively sought work during each week, and did not refuse any offers of work during the weeks claimed. Those claim responses were false or misleading, as the record in this matter and the record developed in Hearing Decisions 16-UI-63034, 16-UI-63035 and 16-UI-63038 shows that claimant was not available for work, did not perform sufficient work search activities to be considered actively seeking work, and did refuse to accept an offer of work during March 2016. The claim responses were material to claimant's eligibility and qualification to receive benefits. Regardless of claimant's knowledge or intent in making them, even if he made them inadvertently or because of a mistake in his understanding of the Department's requirements, because the overpayments were the result of claimant's false or misleading statements of fact to the Department, he is liable to repay them to the Department.

DECISION: Hearing Decisions 16-UI-66594 and 16-UI-66595 are affirmed.

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

DATE of Service: September 14, 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. 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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