

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1118

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On May 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 144716) concluding claimant was not available for work for the weeks of December 13, 2015 through February 20, 2016 and March 6, 2016 through May 21, 2016. On June 15, 2016, decision # 144716 became final without a request for hearing having been filed. On June 28, 2016, the Department served notice of an administrative decision (decision # 111542) assessing an overpayment of \$3,072 based on decision # 144716.

On June 30, 2016, claimant filed a late request for hearing on decision # 144716 and a timely request for hearing on decision # 111542. On July 27, 2016, the Office of Administrative Hearings (OAH) conducted a hearing on decision # 144716, and on July 29, 2016 issued Hearing Decision 16-UI-51955, concluding that claimant did not show good cause for filing a late request for hearing on the May 26, 2016 decision (# 144716). On August 18, 2016, Hearing Decision 16-UI-51955 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

On September 16, 2016, ALJ Wyatt conducted a hearing on decision # 111542, and on September 16, 2016 issued Hearing Decision 16-UI-67668, affirming the Department's decision assessing a \$3,072 overpayment. On September 29, 2016, claimant filed an application for review with EAB regarding Hearing Decision 16-UI-67668.

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

FINDINGS OF FACT: (1) On December 14, 2015, claimant filed an initial claim for unemployment insurance benefits. His weekly benefit amount was \$192. Claimant filed weekly claims for benefits for the weeks of December 13, 2015 through February 20, 2016 (weeks 50-15 through 7-16) and March 6, 2016 through April 23, 2016 (weeks 10-16 through 16-16). The Department gave claimant waiting week credit for week 50-15, and paid claimant \$192 per week for weeks 51-15 through 7-16 and weeks 10-16 through 16-16, for a total of \$3,072. Claimant received the benefits the Department paid to him for the weeks at issue.

(2) During each of the weeks at issue, claimant reported to the Department when claiming benefits that he was available for all suitable work opportunities. The Department paid claimant benefits based on claimant's reports.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid benefits and is 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.*

Claimant asserted at hearing and in his written argument that he was available for work during the weeks at issue and would have appealed the Department's May 26, 2016 decision regarding his availability for work if he had had an interpreter to help him understand the decision. Transcript at 12-13. However, claimant already requested a hearing regarding the May 26 decision and OAH issued Hearing Decision 16-UI-51955 denying his late request for hearing. Claimant did not appeal that decision. Consequently, the May 26, 2016 decision and Hearing Decision 16-UI-51955 establish for the purpose of determining the review now before EAB that claimant was not available for work during the weeks at issue. EAB does not have jurisdiction in this review to reach the issue of claimant's availability for work during the weeks at issue, or whether he had good cause for late appeal of the Department's May 26, 2016 decision. The review is limited to whether claimant received the benefits the Department alleged it paid to him for the weeks at issue, and whether the Department established that it paid claimant benefits for the weeks at issue because claimant made a false statement or misrepresentation of a material fact, regardless of claimant's knowledge or intent to do so.

The Department paid claimant based in part on his weekly claim responses that he was available for work during the weeks claimed. Those claim responses were false or misleading because the May 26, 2016 administrative decision shows as a matter of law that claimant was not available for work during the weeks at issues. Regardless of claimant's knowledge or intent in providing the responses to the claim questions, even if he made them because of a mistake in his understanding of the Department's requirements, because the overpayment was the result of claimant's false or misleading statements of fact to the Department, he is liable to repay the overpayment to the Department.

It is undisputed that the Department paid claimant \$3,072 in benefits during the weeks at issue, and that claimant received the money. Because the Department paid claimant benefits during weeks he was ineligible for them, claimant was overpaid \$3,072.

DECISION: Hearing Decision 16-UI-67668 is affirmed.

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

DATE of Service: October 19, 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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