

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1374

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On August 17, 2016, the Oregon Employment Department issued a decision assessing a \$219 overpayment, based on claimant's misreporting earnings for week 24-16 (June 12 through 18, 2016). On September 6, 2016, this overpayment decision became final without a timely request for hearing having been filed. On August 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 134342). On September 12, 2016, decision # 134342 became final without a request for hearing having been filed. On September 23, 2016, the Department issued decision # 113908 assessing an overpayment of \$449 based on decision # 134342. On September 29, 2016, claimant filed an untimely request for hearing on decision # 134342 and a timely request for hearing on decision # 113908. On November 17, 2016, ALJ Wyatt conducted a hearing, and on November 23, 2016, issued Hearing Decision 16-UI-71696, dismissing claimant's hearing request on decision # 134342 as untimely, and Hearing Decision 16-UI-71724, affirming decision # 113908. On December 7, 2016, claimant filed applications 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-71696 and 16-UI-71724. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1373 and 2016-EAB-1374).

EAB considered claimant's written argument to the extent that it is relevant and based on evidence in the record.

FINDINGS OF FACT: (1) Claimant claimed and received unemployment benefits for weeks 23-16 and 24-16 (June 5 through 18, 2016). For each of these weeks, claimant received \$334 in benefits.

(2) On August 22, 2016, the Department issued decision # 134342 which concluded that on June 10, 2016, claimant voluntarily left work for the Courthouse Fitness Center. The decision stated that unemployment benefits were denied "for a period beginning 6/5/2016 and until claimant has earned and received remuneration from employment as defined in ORS 657.030(2) in an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred."

(3) On September 15, 2016, claimant contacted the Department and made a \$219 payment to repay the Department for the overpayment she was assessed in the August 17 decision.

CONCLUSION AND REASONS: Hearing Decision 16-UI-71696 is **adopted**. Hearing Decision 16-UI-71724 is **affirmed**.

Hearing Decision 16-UI-71696 (late request for hearing on decision # 134342): EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), this hearing decision is **adopted**.

Hearing Decision 16-UI-71724 (overpayment decision): 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 was paid benefits for weeks 23-16 and 24-16 that she was not qualified to receive because the Department determined (in decision # 134342) that she voluntarily left work for an employer without good cause. That decision became final on September 12, 2016, and claimant's late request for hearing on that decision has been dismissed at every level of administrative review. Regardless of claimant's knowledge or intent, she is liable to repay \$449¹ to the Department, or to have that amount deducted from future unemployment benefits.

DECISION: Hearing Decisions 16-UI-71696 and 16-UI-71724 are affirmed.

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

DATE of Service: December 28, 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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¹ Claimant received \$334 in benefits for each of the two weeks at issue (23-16 and 24-16), for a total of \$668. As a result of the \$219 payment she made on September 15, 2016, the amount of the overpayment has been reduced to \$449 (\$668 - \$219 = \$449).