

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1441

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On October 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision assessing claimant a \$490 overpayment (decision # 194123). Claimant filed a timely request for hearing. On December 6, 2016, ALJ Vincent conducted a hearing, and on December 8, 2016 issued Hearing Decision 16-UI-72539, affirming the Department's decision. On December 27, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 23, 2016, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$293.

(2) Portland State University employed claimant as an instructor during the fall quarter of 2016, which included the weeks of September 25, 2016 to October 8, 2016 (weeks 39-16 and 40-16), the weeks at issue. Claimant worked several hours and earned approximately \$380 in wages for each of those weeks, but the wages were not paid until the end of October, 2016.

(3) Claimant filed a claim for benefits for each of the weeks at issue. Each time claimant filed his weekly claim, the Department required him to report the hours of work or earnings he had during the week. However, when claimant filed his claims, he reported to the Department that he did not have any work or earnings. Because claimant did not report any work or earnings, the Department paid claimant \$250 in unemployment insurance benefits for week 39-16 and \$240 in benefits for week 40-16. Attachment to Decision # 194123.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant received \$490 in regular benefits to which he was not entitled and is liable to repay that amount to the Department or have that amount deducted from future benefits otherwise payable under ORS Chapter 657.

Unemployment insurance benefits are payable only to unemployed individuals. *See* ORS 657.155. An individual is considered "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is paid or payable, or in any week of less than full-time work

if the remuneration paid or payable is less than the individual's weekly benefit amount. ORS 657.100. Based on claimant's own testimony, during each of the weeks at issue, claimant earned at least \$380, an amount that exceeded his weekly benefit amount of \$293. Audio Record ~ 11:20 to 12:05. Claimant was, therefore, not "unemployed", and benefits were not payable to him for either of those weeks. Accordingly, claimant was overpaid \$490 in unemployment insurance benefits he was not entitled to receive.

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 received \$490 in benefits he was not entitled to because he falsely reported to the Department that he did not work or have earnings for either week of the weeks at issue, likely because he did not receive his wages for those weeks until the end of October 2016. Regardless of what claimant knew or intended at the time he made those false reports, because claimant's false statements caused the overpayment, he is liable either to repay the overpayment to the Department or have the amount deducted from any future benefits otherwise payable to him under ORS Chapter 657.

DECISION: Hearing Decision 16-UI-72539 is affirmed.

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

DATE of Service: January 24, 2017

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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