

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0170

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On November 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from October 9, 2016 to October 22, 2016 (decision # 100259). On November 28, 2016, decision # 100259 became final without claimant having filed a timely request for hearing. On December 16, 2016, the Department served notice of an administrative decision assessing a \$590 overpayment that claimant was required to repay or have deducted from future benefits otherwise payable (decision # 103644). On December 30, 2016, claimant filed a timely request for hearing on decision # 103644 and a late request for hearing on decision # 100259.

On January 10, 2017, the Office of Administrative Hearings (OAH) mailed two notices of two hearings, one scheduled for January 24, 2017 at 1:30 p.m. on claimant's late request for hearing on decision # 100259, and the second scheduled for January 24, 2017 at 2:30 p.m. on decision # 103644. Claimant did not appear at the 1:30 p.m. hearing. On January 24, 2017, ALJ Wyatt conducted the 2:30 p.m. hearing on decision # 103644, at which claimant appeared. On January 25, 2017, ALJ Wyatt issued Hearing Decision 17-UI-75368, dismissing claimant's late request for hearing on decision # 100259 for failure to appear. On January 27, 2017, ALJ Wyatt issued Hearing Decision 17-UI-75607, affirming decision # 103644.

On February 8, 2017, claimant filed a document that was construed by OAH as a request to reopen the hearing on decision # 100259 and also construed by the Employment Appeals Board (EAB) as an application for review of Hearing Decision 17-UI-75607. The scope of EAB's review is limited to the overpayment issue decided in Hearing Decision 17-UI-75607.

FINDINGS OF FACT: (1) Claimant claimed unemployment insurance benefits for the week of October 16, 2016 to October 22, 2016 (week 42-16). When he claimed benefits that week he reported to the Department that he had actively sought work. Based on claimant's claim and work search report, the Department paid claimant benefits in the amount of \$590, which claimant received.

(2) Claimant was not eligible for benefits during week 42-16 because decision # 100259, finding that claimant did not actively seek work and was ineligible for benefits that week, is final.

CONCLUSIONS AND REASONS: We agree with the ALJ that the Department overpaid claimant \$590 in unemployment insurance benefits he is required to repay or have deducted from future benefits otherwise payable.

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 is ineligible to receive benefits for week 42-16 as a matter of law based on decision # 100259, which, as of the date this decision is being issued, is final. The Department paid claimant \$590 in benefits for that week, making claimant overpaid. The Department paid claimant based on his report that he had actively sought work during week 42-16, a report that is, regardless of claimant's knowledge or intent when making it, false as a matter of law. Because the Department's payment of benefits to claimant for week 42-16 was based on his false statement, claimant is liable to either repay the overpayment or have it deducted from future benefits otherwise payable.

We note, however, that if OAH allows claimant's request to reopen the hearing on decision # 100259, and an Administrative Law Judge finds that claimant had "good cause" for filing a late request for hearing on decision # 100259 and filed his request within a "reasonable time," and finds that claimant actively sought work during week 42-16 and overturns decision # 100259, claimant would be eligible for benefits during week 42-16, and the overpayment that is the subject of this case would become moot.

DECISION: Hearing Decision 17-UI-75607 is affirmed.

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

DATE of Service: February 15, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.