

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0186

Affirmed
Late Request for Hearing Denied
Overpayment Assessed

PROCEDURAL HISTORY: On November 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 80514). On November 28, 2016, decision # 80514 became final, without a request for hearing having been filed. On December 14, 2016, the Department issued a decision (decision # 91935) assessing a \$2,436 overpayment based on decision # 80514. On December 19, 2016, claimant filed a timely request for hearing on decision # 91935, and an untimely request for hearing on decision # 80514. On January 30, 2017, ALJ Meerdink conducted a consolidated hearing and issued Hearing Decision 17-UI-75729, which dismissed as untimely claimant's request for hearing on decision # 80514, and Hearing Decision 17-UI-75730, which affirmed decision # 91935. On February 13, 2017, 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 17-UI-75729 and 17-UI-75730. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0185 and 2017-EAB-0186).

FINDINGS OF FACT: (1) On September 27, 2016, claimant filed an initial claim for unemployment benefits. When she filed her claim, she reported that she had been separated from her employer due to a lack of work.

(2) Claimant claimed and was paid \$406 per week in benefits for weeks 39-16 through 44-16. Claimant received a total of \$2,436 in benefits for these weeks.

CONCLUSION AND REASONS: EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 17-UI-75729 is **adopted**.

For the reasons set forth below, we agree with the ALJ and conclude that claimant was overpaid benefits that she was not entitled to receive. Hearing Decision 17-UI-75730 is therefore **affirmed**.

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 weeks 39-16 through 44-16 as a matter of law based on decision # 80514, which, as of the date this decision is being issued, is final. The Department paid claimant \$2,436 in benefits for those weeks, making claimant overpaid. The Department paid claimant based on his report that she separated from her employer due to a lack of work, and assertion 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 weeks 39-16 through 44-16 was based on her false statement, claimant is liable to either repay the amount she was overpaid or have it deducted from future benefits otherwise payable.

DECISION: Hearing Decisions 17-UI-75729 and 17-UI-75730 are affirmed.

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

DATE of Service: February 22, 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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