

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0415**

*Affirmed  
Overpayment Assessed*

**PROCEDURAL HISTORY:** On January 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks including November 6 through November 26, 2016, and was ineligible for benefits for those weeks (decision # 113619). On February 13, 2017, Decision # 113619 became final without a request for hearing having been filed by claimant.

On March 2, 2017, the Department served notice of an administrative decision assessing a \$1,396 overpayment based on decision # 113619 (decision # 143219). Claimant filed a timely request for hearing. On April 3, 2017, ALJ Seideman conducted a hearing and issued Hearing Decision 17-UI-80174, affirming the Department's decision. On April 7, 2017, claimant filed an application for review of Hearing Decision 17-UI-80174 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) During 2016, claimant filed claims for benefits for the weeks including November 6 through November 26, 2016 (weeks 45-16 through 47-16). When claimant claimed benefits for each of those weeks, claimant certified to the Department that he had actively looked for work during each week. Based in part on those certifications, which later were determined to be false, the Department paid claimant a total of \$1,396 in regular benefits to which he was not entitled.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant was paid \$1,396 in regular benefits to which he was not entitled and is liable under ORS 657.310(1) to either repay \$1,396 to the Department or have that amount deducted from any future benefits otherwise payable him under ORS chapter 657.

ORS 657.310(1) provides that an individual who received regular 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 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.*

Decision # 113619, which claimant did not timely appeal and became final, concluded that claimant did not actively seek work during the weeks at issue, and therefore was ineligible to receive benefits for those weeks. Therefore, as a matter of law, claimant was not entitled to the \$1,396 in regular benefits he received for those weeks. Claimant's statements to the Department that he actively looked for work during those weeks also were false as a matter of law, and caused him to receive the \$1,396 in regular benefits at issue. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310(1) to either repay the \$1,396 in regular benefits to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

**DECISION:** Hearing Decision 17-UI-80174 is affirmed.

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

**DATE of Service: April 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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