

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0606**

*Affirmed*  
*Disqualified*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On February 10, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from January 8 through 14, 2012 (decision # 164333). On March 1, 2012, decision # 164333 became final without claimant having filed a timely request for hearing. On June 15, 2016, the Department served notice of another administrative decision assessing a \$389 overpayment that claimant was required to repay (decision # 133558). On July 5, 2016, decision # 133558 became final without claimant having filed a timely request for hearing. On March 28, 2017, claimant filed late requests for hearing on decisions # 164333 and # 133558. On April 3, 2017, ALJ Kangas issued Hearing Decision 17-UI-80114, dismissing claimant's late request for hearing on decision # 164333, and Hearing Decision 17-UI-80113, dismissing claimant's late request for hearing on decision # 133558, both of which were subject to his right to renew the requests by responding to appellant questionnaires by April 17, 2017. On April 13, 2017, claimant responded to the appellant questionnaires. On May 9, 2017, 2017, ALJ Wyatt conducted two hearings, and on May 12, 2017 issued Hearing Decisions 17-UI-83325 and 17-UI-83330, which allowed claimant's late requests for hearing and affirmed decisions # 164333 and # 133558, respectively. On May 17, 2017, claimant filed timely applications for review of Hearing Decisions 17-UI-83325 and 17-UI-83330 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions Decisions 17-UI-83325 and 17-UI-83330. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0606 and 2017-EAB-0607).

Based on a *de novo* review of the entire records in these cases, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusions allowing claimant's late requests for hearing are **adopted**.

**FINDINGS OF FACT:** (1) Claimant claimed unemployment insurance benefits for the week from January 8 through 14, 2012 (week 2-12). The Department paid claimant two separate checks for that

week, one for \$118 and one for \$389, because claimant's weekly benefit amount increased from \$118 to \$507 during week 2-12.

(2) The overpayment for \$118 was addressed in a separate decision issued by the Department on May 2012 and is not at issue in this case. The Department issued decision # 133558 after an annual audit found the Department had overlooked the \$389 also paid to claimant for week 2-12.

(3) During week 2-12, claimant sought work as a substitute teacher and was registered for work referrals through the High Desert Education Service District (ESD). On January 9, 2012, High Desert ESD offered claimant work for that day as a substitute teacher. Claimant rejected that offer of work because he had telephone interviews scheduled that day with a potential employer.

(4) On January 12, 2012, High Desert ESD offered claimant work for January 13, 2012 as a substitute teacher. Claimant rejected that offer of work due to a medical appointment.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was not available for work from January 8 through 14, 2012 and was therefore ineligible for benefits during that week, and that claimant was overpaid \$389 that he is liable to repay the Department under ORS 657.310.

**Availability for Work.** ORS 657.155(1)(c) requires that individuals be "available for work" during each week claimed as a condition of being eligible for benefits. OAR 471-030-0036(3) (February 23, 2014) defines "available for work" to include, among other things, that claimant be willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, be capable of reporting to work, and refrain from imposing conditions that would substantially reduce his opportunities to return to work at the earliest possible time.

We infer from the fact that claimant had voluntarily registered for work referrals from High Desert ESD that the referrals sent to him from that employer were located within his labor market, and were for work performed during the days and hours customary for substitute teachers in claimant's labor market. Claimant missed two opportunities to work for High Desert ESD during the week at issue, once because of job interviews, and once to attend a medical appointment. For purposes of receiving unemployment insurance benefits, claimant was required to be available for work during *all* of the days and hours substitute teacher work was customarily performed in his labor market. An individual who is not available for even two days during a week claimed must be considered ineligible for benefits for the entire week. Therefore, we conclude that claimant was not available for work for the week from January 8 through 14, 2012 (week 2-12).

**Overpayment.** 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.*

We infer from the fact that the Department initially paid claimant benefits for week 2-12 that claimant certified to the Department that he was available for work during week 2-12 when he claimed benefits for that week. Based upon claimant's certification to the Department that he was available for work during week 2-12, the Department paid him benefits in the amount of \$507, \$389 of which are at issue in this case. The record established that claimant was not entitled to receive these benefits because he was required to comply with the work search requirements of OAR 471-030-003(3) and failed to do so. Claimant's representation regarding his availability for work was, therefore, false. Regardless of claimant's knowledge or intent in making that false statement to the Department, he is liable under ORS 657.310(1) either to repay the \$389 in benefits to the Department or have that amount deducted from any future benefits otherwise payable to him under chapter 657.

In sum, claimant is ineligible for benefits for the week from January 8 through 14, 2012 (week 2-12). In addition, claimant was overpaid and must reimburse the Department \$389 in regular benefits either directly or through deduction from future benefits payable to him.

**DECISION:** Hearing Decisions 17-UI-83325 and 17-UI-83330 are affirmed.

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

**DATE of Service:** June 9, 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](http://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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