

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0793

Affirmed
Ineligible ~ Overpayment Assessed

PROCEDURAL HISTORY: On May 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from March 12, 2017 to May 13, 2017, and was liable to repay a \$2,079 overpayment (decision # 93342). Claimant filed a timely request for hearing. On June 13, 2017, ALJ Wyatt conducted a hearing, and on June 21, 2017 issued Hearing Decision 17-UI-86192, concluding claimant was not available from March 12, 2017 to June 3, 2017, and affirming the assessment of a \$2,079 overpayment. On July 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed weekly claims for unemployment insurance benefits from March 12, 2017 to June 3, 2017 (weeks 11-17 to 22-17), the weeks at issue. Claimant's labor market included Corvallis, Albany, Lebanon, Sweet Home and surrounding areas. During the weeks at issue, claimant sought work as a truck driver and laborer, which was performed all days and shifts.

(2) During the weeks at issue, claimant reported to the Department that he was available for work during each week claimed. As a result of claimant's claims and reports that he was available for work, the Department paid claimant \$231 in unemployment insurance benefits each week from March 12, 2017 to May 13, 2017 (weeks 11-17 to 19-17).

(3) At all relevant times, claimant was ordered by the Linn County Circuit Court to attend a daytime alcohol treatment program. Claimant could not afford the program fee and did not attend during the weeks at issue, but kept his schedule open for them by notifying potential employers that he did not want to work the day shift, and was available for the swing and graveyard shifts.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was ineligible for benefits during the weeks at issue and is liable to repay a \$2,079 overpayment.

Available 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 unemployment insurance benefits. OAR 471-030-0036(3) (February 23, 2014) provides that an individual is considered "available for work" if, among

other things, he is willing to work “during all of the usual hours and days of the week customary for the work being sought” and does not “impos[e] conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time.”

Claimant was not available for work during the weeks at issue. He demonstrated that he was unwilling to work the day shift by telling prospective employers that he was only available to work the swing and graveyard shifts. Claimant’s stated preference for swing and graveyard shifts also imposed a condition which more likely than not substantially reduced his opportunities to return to work at the earliest possible time by presenting prospective employers with a substantial scheduling limitation that essentially prevented him from working one-third of the customary shifts truck drivers and laborers usually worked in his labor market. Because claimant was not willing to work all the shifts customary for his work and imposed a substantial limitation on his availability by doing so, he was not available for work during the weeks at issue, and he is therefore ineligible for benefits during those weeks.

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.*

Claimant received \$231 per week from March 12, 2017 to May 13, 2017 because he incorrectly reported to the Department that he was available for work when, as explained, he was not. In total, the Department overpaid him \$2,079 during the weeks at issue. Regardless of claimant’s knowledge or intent in making incorrect reports about his availability for work, the record shows that claimant caused the overpayment by making them. Because claimant received benefits he was not entitled to receive because of his incorrect reports to the Department, he is liable to either repay the overpayment to the Department or have the overpaid benefits deducted from future benefits that are otherwise payable.

DECISION: Hearing Decision 17-UI-86192 is affirmed.

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

DATE of Service: July 25, 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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