

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0799

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On September 1, 2016, the Oregon Employment Department (the Department) served notices of two administrative decisions, the first concluding that claimant did not actively seek work during the weeks of June 12, 2016 through July 2, 2016 (decision # 143940), and the second concluding that claimant did not actively seek work during the weeks of July 10, 2016 through August 13, 2016 (decision # 145744). Claimant filed timely requests for hearings on both administrative decisions. On September 30, 2016, ALJ M. Davis conducted a consolidated hearing, and on September 30, 2016 issued two hearing decisions, the first concluding that claimant did not actively seek work during the weeks of June 12, 2016 through July 2, 2016 (Hearing Decision 16-UI-68403) and the second concluding that claimant did not actively seek work during the weeks of July 10, 2016 through September 3, 2016 (Hearing Decision 16-UI-68399). On October 5, 2016, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

On October 31, 2016, EAB issued Employment Appeals Board Decisions 2016-EAB-1127 and 2016-EAB-1128, affirming Hearing Decisions 16-UI-68399 and 16-UI-68403 and notifying claimant that those decisions would become final unless claimant filed Petitions for Judicial Review with the Oregon Court of Appeals within 30 days of that date. On November 30, 2016, Decisions 2016-EAB-1127 and 2016-EAB-1128 became final without claimant filing Petitions for Judicial Review with the Oregon Court of Appeals.

On February 22, 2017, the Department served notice of an administrative decision based on the finality of 2016-EAB-1128 assessing a \$710 overpayment that claimant was required to repay (decision # 105434). On February 22, 2017, the Department served notice of another administrative decision based on the finality of EAB Decision 2016-EAB-1127 assessing a \$1,438 overpayment that claimant was required to repay (decision # 105939). Claimant filed timely requests for hearing on both administrative decisions. On June 22, 2017, ALJ Murdock conducted a consolidated hearing, and on June 26, 2017, issued two hearing decisions, the first affirming decision # 105434 (Hearing Decision 17-UI-86611) and the second affirming decision # 105939 (Hearing Decision 17-UI-86612). On July 1, 2017, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-86611 and 17-UI-86612. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0799 and 2017-EAB-0800).

FINDINGS OF FACT: (1) On July 10, 2016, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$313.

(2) For each of the weeks from June 12 through July 2, 2016 (weeks 24-16 through 26-16) and July 10 through September 3, 2016 (weeks 28-16 through 35-16), claimant filed a weekly claim for benefits. When filing each of her claims, claimant certified to the Department that she had actively sought work. Based on claimant's certifications that she had actively sought work during those weeks, the Department paid claimant a total of \$2,148 in regular benefits.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant was overpaid a total of \$2,148 in benefits that she is liable to repay the Department under ORS 657.310 or have that amount deducted from any future benefits otherwise payable to her under ORS Chapter 657.

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.*

Employment Appeals Board Decisions 2016-EAB-1127 and 2016-EAB-1128, 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 \$2,148 in regular benefits she received for those weeks. Claimant's statements to the Department that she actively looked for work during those weeks also were false as a matter of law, and caused her to receive the \$2,148 in regular benefits at issue. Regardless of claimant's knowledge, intent or belief when filing her claims, she is liable under ORS 657.310(1) to either repay the \$2,148 in regular benefits to the Department or have that amount deducted from any future benefits otherwise payable to her under ORS Chapter 657.

DECISION: Hearing Decisions 17-UI-86611 and 17-UI-86612 are affirmed.

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

DATE of Service: July 26, 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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