

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0906**

*Affirmed*  
*Overpayment Assessed*  
*(Se impuso sobrepago)*

**PROCEDURAL HISTORY:** On February 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks including September 4 through October 22, 2016 (weeks 36-16 through 42-16) and was ineligible for benefits for those weeks. (Decision # 75307). Claimant filed a timely request for hearing. On April 3, 2017, ALJ Meerdink conducted a hearing, at which claimant failed to appear, and issued Hearing Decision 17-UI-80123, dismissing claimant's request for hearing based on claimant's failure to appear, leaving decision # 75307 undisturbed. On April 24, 2017, Hearing Decision 17-UI-80123 became final without an Application for Review being filed by claimant.

On June 9, 2017, the Department served notice of an administrative decision assessing a \$3,216 overpayment based on decision # 75307 (decision # 84424). Claimant filed a timely request for hearing. On July 18, 2017, ALJ Meerdink conducted an interpreted hearing and issued Hearing Decision 17-UI-88234, affirming decision # 84424. On July 29, 2017, claimant filed an application for review of Hearing Decision 17-UI-88234 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) During 2016, claimant filed claims for benefits for the weeks including September 4 through October 22, 2016 (weeks 36-16 through 42-16). When claimant claimed benefits for each of those weeks, he certified to the Department that he was available for all suitable work during each week. Based in part on those certifications, which later were determined to be false, the Department paid claimant a total of \$3,216 in regular benefits to which he was not entitled.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant was paid \$3,216 in regular benefits to which he was not entitled and is liable under ORS 657.310(1) to either repay \$3,216 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 # 75307, which remains undisturbed after claimant failed to appear at the April 3 hearing or file an application for review of Hearing Decision 17-UI-80123, concluded that claimant was not available for 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 \$3,216 in regular benefits he received for weeks 37-16 through 42-16. Claimant's certification to the Department that he was available for work during those weeks also were false as a matter of law, and caused him to receive the \$3,216 in regular benefits at issue. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310(1) to either repay the \$3,216 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-88234 is affirmed. *Decisión de la Audiencia 17-UI-88234 queda confirmada.*

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

**DATE of Service:** August 18, 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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**NOTA:** *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

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