

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0991**

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

**PROCEDURAL HISTORY:** On March 1, 2017, the Department issued an administrative decision concluding that claimant did not actively seek work during the period of December 25, 2016 through January 21, 2017 (decision # 101013). That decision stated that a request for hearing needed to be filed by March 21, 2017 to be timely. On April 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,591 overpayment based on decision #101013 (decision # 125340). On April 21, 2017, claimant filed an untimely request for hearing on decision # 101013 and a timely request for hearing on decision # 125340. On August 8, 2017 at 9:30 a.m., ALJ Frank convened a hearing on decision # 101013 at which claimant did not appear and issued Hearing Decision 17-UI-89854, dismissing claimant's request for hearing on decision # 101013. On August 8, 2017 at 10:45 a.m., ALJ Frank also conducted a hearing on decision #125340, and on August 10, 2017 issued Hearing Decision 17-UI-90117, affirming decision # 125340. On August 14, 2017, claimant filed a request to reopen the hearing on decision # 101013 and an application for review of Hearing Decision 17-UI-90117 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On December 27, 2016, claimant filed an initial claim for unemployment insurance benefits. That claim was determined valid, with a weekly benefit amount of \$590.

(2) Claimant claimed benefits for the period of January 1, 2017 through January 21, 2017 (weeks 01-17 through 03-07), the weeks at issue. When claimant claimed these benefits, he certified he was on temporary layoff from his regular employment and did not report any work seeking activities to the Department. Based on this certification, claimant was paid \$1,591 in benefits during the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant received \$1,591 in benefits to which he was not entitled and is liable to repay those benefits to the Department or to have them deducted from any future benefits otherwise payable to him.

ORS 657.310(1) provides if an individual receives benefits to which the individual is not entitled because the individual, *regardless of the individual's knowledge or intent*, made or caused to be made a

false statement or misrepresentation of a material fact or failed to disclose a material fact, the individual is liable to repay the amount of the benefits or to have them deducted from any future benefits otherwise payable to the individual. (Emphasis added.) An individual is entitled to receive benefits for any week only if, among other things, the individual actively sought work during that week. ORS 657.155(1)(c).

Claimant did not dispute that he received \$1,591 in benefits for the weeks at issue, or that, unless he fell within one of the exceptions set out in OAR 471-030-0036(5)(b) or (d) (February 23, 2014), he was required to actively seek work as specified in OAR 471-030-0036(5)(a) to maintain his eligibility to receive benefits during each of the weeks of the weeks at issue. Administrative decision # 101013 became final on March 21, 2017 and, as such, establishes as a matter of law that claimant did not actively seek work during the weeks at issue and was not entitled to receive benefits for those weeks.<sup>1</sup> Accordingly, even if claimant did not know that his certification that he actively sought work during the each of the weeks at issue was inaccurate, he is liable to repay the \$1,591 in benefits he received for those weeks or to have \$1,591 deducted from any future benefits otherwise payable to him.

**DECISION:** Hearing Decision 17-UI-90117 is affirmed. *Decisión de la Audiencia 17-UI-90117 queda confirmada.*

J. S. Cromwell and D. P. Hettle.

**DATE of Service: September 5, 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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<sup>1</sup> Our disposition in this decision is based on the finality of decision # 101013. However, if claimant's pending request to reopen the hearing on decision # 101013 is allowed, if claimant's late request for hearing on decision # 101013 is also allowed, and, after a hearing on the merits of decision # 101013, if an ALJ decides that claimant was eligible for benefits during some or all of the weeks at issue in decision # 101013, the existence or amount of the overpayment in this case might be subject to change and the Department would have to take appropriate action to cancel or amend the overpayment decision.

**Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.