

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0994

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On October 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of January 31 through February 13, 2016, February 21 through February 27, 2016 and March 27 through April 2, 2016 (decision # 111925). That decision stated that to be timely a request for hearing needed to be filed on or before November 9, 2016. Claimant did not file a request for hearing and decision # 111925 became final on November 9, 2016. On April 5, 2017, the Department served notice of an administrative decision concluding claimant was overpaid \$2,219 in benefits based on decision # 111925 (decision # 143512). On April 7, 2017, claimant filed, among other things, an untimely request for hearing on decision # 111925 and a timely request for hearing on decision # 143512. On April 12, 2017, ALJ Kangas issued Hearing Decision 17-UI-80804, dismissing claimant's request for hearing on decision # 111925 as untimely subject to a right to renew that request if claimant completed and filed the Appellant Questionnaire enclosed with the hearing decision by April 26, 2017. Claimant did not file a completed Appellant Questionnaire by April 26, 2017 and Hearing Decision 17-UI-80804 became final on May 2, 2017 without claimant having filed an application for review with the Employment Appeals Board (EAB). On August 9, 2017, ALJ Lohr conducted a hearing on the merits of decision # 143512, and issued Hearing Decision 17-UI-89977, affirming the Department's decision. On August 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 21, 2015, claimant filed an initial claim for unemployment insurance benefits. That claim was determined valid with a weekly benefits amount of \$567.

(2) Claimant claimed and was paid benefits for the weeks of January 31 through February 13, 2016, February 21 through February 27, 2016 and March 27 through April 2, 2016 (weeks 05-16, 06-17, 08-16 and 13-16), the weeks at issue.

(3) During the weeks at issue, when claimant filed his weekly claims, claimant reported he was actively seeking work. The Department would not have paid benefits to claimant absent his representation that he was actively seeking work.

CONCLUSIONS AND REASONS: During the weeks at issue claimant was paid \$2,219 in benefits to which he was not entitled and he is liable to repay the amount of those benefits for the Department or to have that amount deducted from future benefits otherwise payable to him.

ORS 657.310(1) provides that 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 the amount of the benefits deducted from any future benefits otherwise payable to the individual (emphasis added). ORS 657.155(1)(c) provides that an individual is eligible to receive benefits for any week only if the individual actively seeks work during that week.

Claimant did not dispute that he received \$2,219 in benefits for the weeks at issue, and did not dispute that he reported to the Department that he actively sought work when he claimed those benefits. Decision # 111925 became final on November 9, 2016 and establishes as a matter of law that claimant did not actively seek work during the weeks at issue. That means that his representations about actively seeking work when he made his weekly claim reports during the weeks at issue were false as a matter of law. While claimant disputed the conclusion that he did not actively seek work, decision # 111925 is final and cannot be disputed in proceedings on decision # 143512. Because decision # 111925 establishes that claimant was ineligible to receive benefits during the weeks at issue because of an inadequate work search, and claimant would not have received benefits during those weeks absent his representations that he had actively sought work, claimant received benefits to which he was not entitled during the weeks at issue even if he did not know that his representations about seeking work were false and thought he was exempt from work search requirements. Accordingly, claimant was overpaid \$2,219 in benefits for the weeks at issue which he is liable to repay or to have deducted from future benefits otherwise payable to him.

DECISION: Hearing Decision 17-UI-89977 is affirmed.

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

DATE of Service: September 7, 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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