

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1315**

*Affirmed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On February 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for all suitable work from January 1, 2017 to February 11, 2017, and ongoing until claimant proved himself eligible for benefits (decision # 110952). Claimant filed a timely request for hearing. On May 5, 2017, ALJ Snyder conducted a hearing, and on May 12, 2017 issued Hearing Decision 17-UI-83345, concluding claimant was not available for work from January 1, 2017 to April 1, 2017. On May 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On June 14, 2017, EAB issued 2017-EAB-0631, affirming Hearing Decision 17-UI-83345. On July 14, 2017, Appeals Board Decision 2017-EAB-0631 became final without a Petition for Judicial Review being filed with the Oregon Court of Appeals.<sup>1</sup>

On July 20, 2017, the Department served notice of an administrative decision assessing a \$690 overpayment, based on decision # 110952, which claimant was required to repay (decision # 142416). Claimant filed a timely request for hearing. On November 2, 2017, ALJ Janzen conducted a hearing, and on November 3, 2017, and issued Hearing Decision 17-UI-96124, affirming the Department's decision. On November 13, 2017, claimant filed an application for review of Hearing Decision 17-UI-96124 with EAB.

**FINDINGS OF FACT:** During 2017, claimant filed claims for benefits for the weeks including January 8 through February 11, 2017 (weeks 02-17 through 06-17). When claimant claimed benefits for each of those weeks, claimant certified to the Department that he was available for all suitable work. Based in part on those certifications, which later were determined to be false, the Department paid claimant a total of \$690 in regular benefits to which he was not entitled. Audio Record ~ 17:00 to 18:00.

<sup>1</sup> We take notice of these facts, which are contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of their objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant was paid \$690 in regular benefits to which he was not entitled and is liable under ORS 657.310(1) to either repay \$690 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.*

Appeals Board Decision 2017-EAB-0631, which claimant did not timely appeal and became final, concluded that claimant was not available for all suitable 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 \$690 in regular benefits he received for those weeks. Claimant's statements to the Department that he was available for work during those weeks were, therefore, false as a matter of law, and caused him to receive the \$690 in regular benefits at issue. Regardless of claimant's knowledge or intent in making what turned out to be false statements to the Department, he is liable under ORS 657.310(1) to either repay the \$690 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-96124 is affirmed.

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

**DATE of Service:** December 11, 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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