

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

*Affirmed on Reconsideration*  
*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.

On July 20, 2017, the Department served notice of an administrative decision, based on decision # 110952, assessing a \$690 overpayment that 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. On December 11, 2017, EAB issued Appeals Board Decision 2017-EAB-1315, affirming Hearing Decision 17-UI-96124. On December 27, 2017, claimant filed a timely request for reconsideration of Appeals Board Decision 2017-EAB-1315. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**CONCLUSIONS AND REASONS:** On reconsideration we adhere to Appeals Board Decision 2017-EAB-1315 and re-affirm Hearing Decision 2017-UI-96124.

Any party may request reconsideration, among other things, to correct an error of material fact or law. *See* ORS 657.290(3); OAR 471-041-0145(1). Claimant requested reconsideration arguing that EAB made errors of material fact or law, specifically, by not taking seriously or mentioning certain facts and evidence that claimant entered into evidence during the November 2, 2017 hearing before ALJ Janzen. The facts claimant alleged EAB ignored included that claimant has documented disabilities that affect

his ability to work full time, and that under ORS 657.155 and OAR 471-030-0036 he should not be deemed unable to work on the basis of his disabilities so long as he remained available for some work.

Although we agree with claimant that Oregon laws and rules provide that an individual with a long-term or permanent physical or mental impairment may not be disqualified from receiving benefits on the basis of that impairment if he remained available for some work, that is not the issue in Appeals Board Decision 2017-EAB-1315. EAB's jurisdiction in Appeals Board Decision 2017-EAB-1315 was confined solely to whether or not claimant was overpaid \$690 as a matter of law, and whether he could be required to repay the overpaid benefits to the Department. The existence of any impairment(s) and claimant's availability for work were outside EAB's jurisdiction, and EAB therefore lacked the legal right to address that issue.<sup>1</sup> EAB therefore did not make a material error of fact or law when reaching a decision about claimant's overpayment in Appeals Board Decision 2017-EAB-1315.

For the reasons explained in Appeals Board Decision 2017-EAB-1315 and Hearing Decision 17-UI-96124, claimant was overpaid \$690 in benefits as a matter of law, and the overpaid benefits are subject to repayment or deduction from benefits otherwise payable to claimant.

**DECISION:** On Reconsideration, Hearing Decision 17-UI-96124 is affirmed.

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

**DATE of Service:** December 28, 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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<sup>1</sup> That claimant was not available for work, and was not eligible for benefits during the weeks of January 1, 2017 to April 1, 2017, was established in Appeals Board Decision 2017-EAB-0631, in which EAB specifically rejected claimant's assertion that he should not be deemed unavailable for work based upon the impairment(s) he identified in that hearing record. As noted in the procedural history in this case, Appeals Board Decision 2017-EAB-0631 became final as a matter of law on July 14, 2017. Claimant is precluded by law from attacking or re-litigating the same issues in separate proceedings about the overpayment that resulted from those other proceedings. *See e.g.* ORS 657.273.