

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1403

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On August 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from December 11, 2016 through January 7, 2017 (decision # 70228). On August 22, 2017, decision # 70228 became final without claimant having filed a request for hearing. On September 12, 2017, the Department served notice of an administrative decision, based on decision # 70228, concluding that claimant was overpaid \$580 in benefits for the weeks from December 25, 2016 through January 7, 2017 that he must repay the Department (decision # 131857). On September 26, 2017, claimant filed a late request for hearing on decision # 70228 and a timely request for hearing on decision # 131857. On October 23, 2017, ALJ Shoemake conducted hearings, and on October 24, 2017 issued Hearing Decision 17-UI-95209 dismissing claimant's late request for hearing on decision # 70228 as untimely without good cause, and Hearing Decision 17-UI-95229 affirming decision # 131857. On November 10, 2017, claimant filed timely applications for review of Hearing Decisions 17-UI-95209 and 17-UI-95229 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-95209 and 17-UI-95229. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1403 and 2017-EAB-1316).

In written argument, claimant asserted that he actively sought work from December 11, 2016 through January 7, 2017. Claimant further asserted that he should not be required to repay the \$580 in benefits he received for the weeks from December 25, 2016 through January 7, 2017 because, to the best of his knowledge, he was claiming/filing correctly and eligible for those benefits, was at no fault, and did his best to understand and follow the rules/instructions when filing. However, we reviewed the hearing records in their entirety and agree with the ALJ's dismissal of claimant's request for hearing on decision # 70228 as untimely without good cause. Claimant therefore did not actively seek work from December 11, 2016 through January 7, 2017, and is not eligible for benefits for those weeks, as a matter of law. We therefore agree with the ALJ that claimant must repay the \$580 in benefits he received for the weeks

from December 25, 2016 through January 7, 2017 regardless of his knowledge or intent when claiming benefits for those weeks.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 17-UI-95209 and 17-UI-95229 are affirmed.

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

DATE of Service: December 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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