

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1410

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On July 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of March 5, 2017 through July 8, 2017 (decision # 140417). Claimant filed a timely request for hearing. The Office of Administrative Hearings (OAH) scheduled a hearing for August 2, 2017. On August 2, 2017, claimant failed to appear at the hearing, and on August 3, 2017 ALJ Meerdink issued Hearing Decision 17-UI-89538, dismissing claimant's request for hearing due to her failure to appear. On September 13, 2017, the Department issued an administrative decision assessing a \$1,242 overpayment based on decision # 140417 and Hearing Decision 17-UI-89538 (decision # 161012). On September 27, 2017, claimant filed a timely request for hearing on decision # 161012. On October 3, 2017, claimant filed a request to reopen the hearing on decision # 140417, and on October 4, 2017, ALJ Kangas issued Hearing Decision 17-UI-93851, denying claimant's request. On October 24, 2017, Hearing Decision 17-UI-93851 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On November 28, 2017, ALJ Meerdink conducted a hearing on decision # 161012, and on November 29, 2017 issued Hearing Decision 17-UI-97744, affirming that decision. On December 8, 2017, claimant filed an application for review of Hearing Decision 17-UI-97744 with EAB.

FINDINGS OF FACT: (1) On February 17, 2017, claimant filed an initial claim for benefits after a work separation. Claimant's claim was determined valid with a weekly benefit amount of \$138. Claimant claimed and was paid benefits for the weeks of March 12, 2017 through May 13, 2017 (weeks 11-17 through 19-17), the weeks at issue. When claiming benefits for those weeks, claimant certified that she was available for work. Claimant was paid a total of \$1,242 in benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was paid \$1,242 in benefits to which she 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 her.

ORS 657.155(1)(c) provides that an unemployed individual is eligible to receive benefits in any week only if, among other things, the individual was available for work during that week. ORS 657.310(1) provides that if an individual received benefits to which the individual was not entitled because the individual, regardless of the individual's knowledge or intent, made or cause to be made a false statement or misrepresentation of a material fact, the individual is liable to repay the amount of the benefits to the Department or to have the amount deducted from any future benefits otherwise payable to the individual.

Decision #140417 concluded that claimant was not available for work during the weeks at issue. Although claimant requested a hearing on decision # 140417, her request for hearing was dismissed because she failed to appear at the scheduled hearing and her subsequent request to reopen that hearing was denied. *See* Hearing Decisions 17-UI-89538 and 17-UI-93851. Because Hearing Decision 17-UI-93851 became final on October 24, 2017 without review of it having been sought, decision # 140417 remains undisturbed and it establishes as a matter of law that claimant was not available for work during the weeks at issue and, accordingly, was not eligible to receive benefits during those weeks. Claimant did not dispute that she was paid \$1,242 in benefits during the weeks at issue. Nor did claimant dispute that the Department would not have paid her benefits during those weeks if she had not certified that she was available for all suitable work during them, or if she had disclosed to the Department that she was in actuality not available for work. Since claimant's certification that she was available for work was a false as matter of law based on decision # 140417, and her receipt of the \$1,242 in benefits during the weeks at issue was predicated on this false certification then, regardless of whether claimant knew the certification was false or whether she was innocently mistaken, she is liable to repay those benefits or to have them offset against future benefits otherwise payable to her under ORS 657.310(1).

Claimant was overpaid \$1, 242 in benefits. Claimant is liable to repay the amount of those benefits to the Department or to have that amount deducted from any future benefits otherwise payable to her.

DECISION: Hearing Decision 17-UI-97744 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: January 12, 2018

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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