

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0245**

*Affirmed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On February 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 91740) concluding that claimant did not actively search for work from December 11, 2016 through January 7, 2017 (weeks 50-16 through 01-17). Claimant filed a timely request for hearing. On June 28, 2017, ALJ Messecar conducted a hearing, and on July 6, 2017, issued Hearing Decision 17-UI-87281, affirming the administrative decision. On July 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On August 11, 2017, EAB issued Appeals Board Decision 2017-EAB-0862, affirming the hearing decision. On September 11, 2017, EAB Decision 2017-EAB-0862 became final without claimant having filed a petition for judicial review with the Oregon Court of Appeals.

On October 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,864 overpayment that claimant was liable to repay (decision # 144040). Claimant filed a timely request for hearing. On February 16, 2018, ALJ Janzen conducted a hearing, and on February 20, 2018 issued Hearing Decision 18-UI-103556, affirming decision # 144040. On March 7, 2018, claimant filed an application for review of Hearing Decision 18-UI-103556 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On December 11, 2016, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks of December 11, 2016 to January 14, 2017 (weeks 50-16 through 2-17). Each week claimant claimed benefits he reported to the Department that he actively sought work or was exempt from having to seek work due to a layoff. Based in part upon claimant's reports, the Department assigned waiting week credit to week 50-16 and paid claimant \$466.00 per week for weeks 51-16, 52-16, 1-17 and 2-17, totaling \$1,864.

(2) The Department subsequently determined that claimant had not actively sought work and was not eligible to receive benefits from week 50-16 through 1-17, and should not have been given waiting week credit or paid benefits. The Department also determined that because claimant was not eligible for waiting week credit during week 50-16, claimant's waiting week had to be moved to week 2-17, the first week claimant became eligible for benefits again after his period of ineligibility, which meant claimant

was not entitled to receive a benefit payment and was therefore overpaid \$466 for that week. EAB affirmed claimant's ineligibility for benefits in EAB Decision 2017-EAB-0862, which is final as a matter of law.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ that claimant was overpaid \$1,864 in benefits he was not eligible to receive and is now liable to repay or have deducted from future benefits otherwise payable.

ORS 657.310(1) provides that an individual who received 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 or caused to be 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.*

As a matter of law, claimant was not eligible to receive waiting week credit during week 50-16 and was not eligible to receive benefit payments during weeks 51-16 through 1-17. Because week 2-17 was his waiting week, he was also not eligible to receive a benefit payment that week. In total, claimant was overpaid \$1,864 in benefits.

Claimant received the overpaid benefits because he inaccurately reported to the Department that he was actively seeking work, or exempt from the requirement that he actively seek work, when he claimed benefits each week. There is no evidence suggesting that claimant intended to mislead the Department, or that his reports were attributable to anything more than an error in his understanding of the rules applicable to his claim. Regardless of claimant's knowledge or intent when he made inaccurate reports, however, the overpayment occurred because of the inaccurate reports, and claimant is therefore liable to repay the overpaid benefits to the Department or have them deducted from future benefits otherwise payable.

**DECISION:** Hearing Decision 18-UI-103556 is affirmed.

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

**DATE of Service:** March 29, 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](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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