

EO: 200  
BYE: 201837

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

065  
AAA 005.00  
MC 010.05  
MC 000.00

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0493**

*Affirmed*  
*Late Request for Hearing Dismissed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On December 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from November 12, 2017 to November 18, 2017 (decision # 112223). On December 21, 2017, decision # 112223 became final without claimant having filed a timely request for hearing. On January 19, 2018, the Department issued another decision concluding that claimant was overpaid \$508 that he was liable to repay (decision # 161632). On January 30, 2017, claimant filed a late request for hearing on decision # 112223 and a timely request for hearing on decision # 161632. On April 19, 2017, ALJ Seideman conducted a consolidated hearing, and on April 20, 2018 issued Order Nos. 18-UI-107862, dismissing claimant's late request for hearing on decision # 112223, and 18-UI-107873, affirming decision # 161632. On May 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-107862 and 18-UI-107873. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0493 and 2018-EAB-0494).

**FINDINGS OF FACT:** (1) On September 19, 2017, claimant filed an initial claim for benefits. His weekly benefit amount was \$508.

(2) Claimant filed a weekly claim for benefits for the week of November 12, 2017 to November 18, 2017 (week 46-17). He reported to the Department that he was available for work that week, and, based in part on claimant's report, the Department paid him \$508 in benefits for that week.

**CONCLUSIONS AND REASONS:** On *de novo* review and pursuant to ORS 657.275(2), Order No. 18-UI-107862, concluding claimant's late request for hearing was dismissed, is **adopted**. We also agree with the ALJ that claimant was overpaid \$508 that he is liable to repay.

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.*

By operation of decision # 112223, which became final without claimant having filed a timely request for hearing, claimant was not available for work during week 46-17 as a matter of law. Claimant incorrectly reported to the Department that he was available for work that week, which caused the Department to pay him \$508 in benefits that he was not entitled to receive. Claimant's report was false as a matter of law. Regardless of claimant's knowledge or intent in making a false report to the Department, because he caused the overpayment he is liable to repay the overpaid benefits to the Department. Claimant is therefore liable to repay his \$508 overpayment to the Department.

**DECISION:** Order Nos. 18-UI-107862 and 18-UI-107873 are affirmed.

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

**DATE of Service:** May 24, 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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