



filed for benefits, so the Department is at fault for not denying her claim at the outset. She argues that the application forms she had to fill out were confusing and misled her into believing that she was eligible for benefits due to the loss of her second job. The Department agreed at oral argument that the form asked claimants whether they had lost employment as a result of the pandemic, and that claimant had lost one of her jobs for this reason.

The unemployment compensation statute requires claimants to certify that they have not earned or received any wages “for any employment, whether subject to this chapter or not,” during any week for which unemployment benefits are claimed. 21 V.S.A. § 1346(b). The statute requires claimants to repay benefits they received to which they were not entitled when receipt was based on nondisclosure or misrepresentation of a material fact, regardless of whether the misrepresentation or nondisclosure was intentional. 21 V.S.A. § 1347(a). Absent a compelling indication of error, we defer to the Board’s interpretation of the statute it is charged with executing. Sec’y, Agency of Nat. Res. v. Upper Valley Reg’l Landfill Corp., 167 Vt. 228, 238 (1997).

The interpretation of the ALJ and the Board is reasonable. The statute provides that a person “shall be liable” for benefits received due to nondisclosure or misrepresentation “irrespective of whether such nondisclosure or misrepresentation was known or fraudulent.” 21 V.S.A. § 1347(a). The word “shall” in the statute indicates that repayment is mandatory. See Town of Victory v. State, 174 Vt. 539, 544 (2002) (mem.) (“Use of the word ‘shall’ in a statute generally means that the action is mandatory, as opposed to directory.”). Because the statute requires repayment of overpaid amounts due to nondisclosure regardless of intent, claimant’s sincere belief that she was eligible for benefits based on her loss of part-time employment does not absolve her of liability. It appears the Department likely erred in allowing her initial claim and that the language used in its forms may have added to the confusion about her eligibility. However, this does not alter the fact that claimant did not report her income from her state employment each week. Her omission of this material fact, even though made in good faith, makes her liable for the benefits paid for those weeks under the plain language of the statute. We therefore see no error that would justify reversing the Board’s decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice