

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0346

*Hearing Decision 14-UI-10763 Affirmed
Ineligible Weeks 44-13 and 45-13*

Hearing Decision 14-UI-11196 Reversed & Remanded

PROCEDURAL HISTORY: On December 10, 2013, the Oregon Employment Department (the Department) served notice of two administrative decisions concluding that claimant did not actively seek work from October 27 through November 9, 2013 (decision # 112154), and that he was not able to work from October 27 through December 7, 2013 (decision # 112538). Claimant filed timely requests for hearing on both decisions. On February 12, 2014, ALJ Hatfield conducted a consolidated hearing. On February 20, 2014, the ALJ issued Hearing Decision 14-UI-10763, affirming decision # 112154. On February 26, 2014, the ALJ issued Hearing Decision 14-UI-11196, affirming decision # 112538, and concluding that claimant was able to work and actively sought work from December 8 through 14, 2013, and that he did not actively seek work from December 15, 2013 through February 8, 2014. On March 3, 2014, claimant filed applications for review of Hearing Decisions 14-UI-10763 and 14-UI-11196 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-10763 and 14-UI-11196. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-0345 and 2014-EAB-0346).

EAB reviewed the entire hearing record and claimant's written argument. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 14-UI-10763 is **adopted**.

No party appealed that portion of Hearing Decision 14-UI-11196 concluding that claimant was able to work and actively sought work from December 8 through 15, 2013. EAB therefore limited its review to the other weeks at issue.

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-11196 is reversed, and this matter remanded for further proceedings.

To be eligible to receive benefits, unemployed individuals must be able to work and actively seek work during each week claimed. ORS 657.155(1)(c). An individual is considered able to work for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (January 8, 2006). An individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a).

In Hearing Decision 14-UI-11196, the ALJ concluded that claimant was not able to work from October 27 through December 7, 2013, and that he did not actively seek work from December 15, 2013 through February 8, 2014.¹ The record supports the ALJ's conclusions with respect to the weeks from October 27 through December 7. At hearing, however, the ALJ did not ask claimant or the Department's witness about claimant's work search activities from December 15 through February 8. The ALJ asked claimant about his work search activities during prior weeks, and left the record open for claimant to submit documentation of those activities. Transcript at 18-19. Claimant submitted documentation of his work search during the prior weeks but not for the weeks from December 15 through February 8. Exhibit 2. The ALJ therefore concluded in Hearing Decision 14-UI-11196 that claimant did not seek work from December 15 through February 8.²

In written argument, claimant asserted that the ALJ did not ask him for documentation of his work search activities from December 15 through February 8, only from the prior weeks. Claimant also submitted documentation of his work search activities from December 15 through February 8. More likely than not, claimant did not submit that documentation to the ALJ after the hearing because he misunderstood the ALJ's instructions. We therefore receive claimant's documentation of his work search activities from December 15 through February 8 into evidence as necessary to complete the record, pursuant to 471-041-0090(1) (October 29, 2006). Due process of law requires that the Department be given the opportunity to respond to claimant's new information. Hearing Decision 14-UI-11196 therefore is reversed, and this matter remanded for another hearing to address claimant's eligibility for benefits from December 15, 2013 through February 8, 2014.

DECISION: Hearing Decision 14-UI-10763 is affirmed. Hearing Decision 14-UI-11196 is set aside, and this matter remanded for further proceedings consistent with this order.

Tony Corcoran and D. E. Larson;
Susan Rossiter, not participating.

DATE of Service: March 24, 2014

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-11196 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

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

¹ Hearing Decision 14-UI-11196 at 3.

² *Id.*

information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.