

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0857

Reversed and Remanded

PROCEDURAL HISTORY: On April 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was unavailable for work from March 9, 2014 to March 29, 2014 (weeks 11-14 to 13-14) (decision # 140722). Claimant filed a timely request for hearing. On May 1, 2014, ALJ Shoemake conducted a hearing, and on May 5, 2014, issued Hearing Decision 14-UI-16793, concluding claimant was unavailable for work from March 9, 2014 to April 19, 2014 (weeks 11-14 to 16-14). On May 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-16793 should be reversed, and this matter remanded.

Claimant was required to serve an 18-day period of incarceration and had the option to elect to serve his sentence over 18 consecutive days, or to serve it on weekend days only over approximately 9 consecutive weekends. Claimant spoke with a Department employee who told him that the customary days and hours for the type of work he sought included only weekdays, meaning he would remain available for work for purposes of receiving unemployment insurance benefits if he elected to serve his sentence over consecutive weekends rather than consecutive days. Claimant then elected to serve his sentence over consecutive weekends to maintain his availability.

The Department employee with whom claimant spoke was incorrect about the days and hours for welder work in claimant's labor market, making the information she provided to claimant false or misleading. Another Department employee subsequently called and sent claimant information explaining that the customary days and hours for welder work in claimant's labor market included weekends. The Department concluded that claimant was not available for work between March 9th and April 19th, and up to May 11th, because claimant was incarcerated Saturdays and Sundays from approximately 8:00 a.m. to 8:00 p.m. over nine consecutive weeks, which made him incapable of reporting to work during some of the customary days and hours for the type of work he sought, and denied benefits for the period during which claimant spent his weekends incarcerated.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). To be considered “available for work” for purposes of ORS 657.155(1)(c), the individual be available for work opportunities throughout the labor market during the customary days and hours for the types of work he sought. OAR 471-030-0036(3) (February 23, 2014).

Notwithstanding those provisions, an agency may not deny an individual a benefit under circumstances where equitable estoppel must be applied. Equitable estoppel will be applied against an agency only if it is shown that the person asserting it was misled by the agency and justifiably and detrimentally relied on the misleading conduct. *See Employment Division v. Western Graphics Corporation*, 76 Or App 608, 710 P2d 788 (1985) (*citing Pilgrim Turkey Packers, Inc. v. Dept. of Revenue*, 261 Or. 305, 493 P.2d 1372 (1973)).

There is no dispute that a Department employee initially provided claimant with false information about the customary days and hours for welder work in claimant’s labor market, or that claimant relied on that information to his detriment. However, for estoppel to apply, and for the period of ineligibility claimant experienced to be reduced by the number of additional weeks of unavailability caused by claimant’s detrimental reliance on the false information, claimant must have *justifiably* relied upon the false or misleading information he received from the Department. In other words, he must have agreed to the sentencing structure that extended his period of ineligibility for benefits after he received the false or misleading information, but before he had reason to know that the information was false or that he had been misled.

In this case, the Department’s witness testified that although claimant was initially provided with false or misleading information, the witness she subsequently provided claimant with true and correct information about the days and hours customary for welder work in claimant’s labor market. However, the record does not show, and the ALJ did not ask, when claimant was provided with false or misleading information about the hours and days customary for welder work in his labor market, when the Department’s witness notified claimant of the actual days and hours customary for welders in his labor market, when claimant made the decision he made to serve his 18-day sentence on weekends instead of consecutive days over a shorter period, and, finally, whether, if he had the opportunity to do so, claimant sought to change that arrangement after being notified by the Department’s witness that the customary days and hours for welder work in his labor market were different than he had previously been told. Without that information, the record fails to show whether claimant was justified in relying to his detriment on the false or misleading information he had been given.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant justifiably relied on the false or misleading information a Department employee provided to him, Hearing Decision 14-UI-16793 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 14-UI-16793 is set aside, and this matter remanded for additional evidence consistent with this order.

Tony Corcoran and J. S. Cromwell
Susan Rossiter, not participating.

DATE of Service: June 5, 2014

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 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.