

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1113

Affirmed
Ineligible for Weeks 15-14 through 20-14
Eligible for Week 21-14

PROCEDURAL HISTORY: On May 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from April 6, 2014 through May 3, 2014 (decision # 102919). Claimant filed a timely request for hearing. On May 28, 2014, ALJ Murdock conducted a hearing, and on June 3, 2014 issued Hearing Decision 14-UI-18844, modifying the Department's decision, concluding claimant is not eligible to receive benefits for the period April 5, 2014 through May 17, 2014, and is eligible for benefits for the period May 18, 2014 through May 24, 2014. On June 13, 2014, the ALJ issued Amended Hearing Decision 14-UI-19022, modifying the Department's decision, and concluding claimant is not eligible to receive benefits for the period April 6, 2014 through May 17, 2014, and is eligible for benefits for the period May 18, 2014 through May 24, 2014. On June 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed weekly claims for benefits from April 6, 2014 through May 24, 2014 (weeks 15-14 through 21-14), the weeks at issue. The Department denied claimant benefits for each week he claimed.¹

(2) When claimant filed his initial claim for benefits, he was employed by J. Clancy, Inc. The employer occasionally laid off claimant for a few days or weeks between job assignments.

(3) On April 2, 2014, claimant's job assignment ended. The employer's president instructed claimant to report to work on April 3, 2014 to begin a different job assignment that the employer expected to last approximately ten days. On April 3, 2014, claimant did not report to work.

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at 2014-EAB-1113.

(4) On April 6, 2014 and April 14, 2014, claimant's supervisor asked claimant to report to work, and claimant refused because he was in the process of moving from Eugene to Hermiston, Oregon and due to a court appearance.

(5) Claimant understood the Department required him to contact two employers and conduct three additional work search activities each week he claimed benefits if he was not on temporary layoff.

(6) During weeks 15-14 through 19-14, claimant contacted no employers other than J. Clancy, Inc., and conducted no other work search activities. During week 20-14, claimant contacted the employer and went to the Department office in Hermiston one day to look for job postings.

(7) During week 21-14, claimant contacted three new employers and conducted three additional work search activities.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant is not eligible for benefits for weeks 15-14 through 20-14, and is eligible for benefits for week 21-14.

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual must meet certain minimum requirements to be considered "available for work" for purposes of ORS 657.155(1)(c). OAR 471-030-0036(3) (February 23, 2014). Among those requirements are that the individual be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* For purposes of ORS 657.155(1)(c), 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). With few exceptions, none of which apply here, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* Where, as here, the Department did not pay a claimant benefits, the claimant has the burden to establish that he is eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant claimed benefits for weeks 15-14 and 16-14. The first issue is whether claimant was available for work during weeks 15-14 and 16-14. The preponderance of evidence shows claimant refused work on April 6 and April 14, 2014 because he was relocating from Eugene to Hermiston, Oregon and had a court appearance during that time. Therefore, claimant was not willing to work during weeks 15-14 and 16-14, and therefore was not available for work during those weeks.

At issue for all the weeks claimed is whether claimant was actively seeking work. Claimant testified that he did not make new employer contacts during weeks 15-14 through 20-14 because he believed he was on temporary layoff from the employer and would return to work for the employer on May 2, 2014. Transcript at 26 to 29. OAR 471-030-0036(5)(b)(A) provides an exception to the requirement to actively seek work with new employers during each week claimed for an individual on temporary layoff of four weeks or less if the employer gave the individual a return date at the time of layoff. Here, the record does not show the employer laid off claimant on April 3 or gave him a return to work date other than April 3. Thus, the exception does not apply. Even if claimant had been on temporary layoff, where an individual was not given a date to return to work, "such individual must immediately actively seek

work with other employers . . . beginning with the week following the end of the week in which the temporary layoff occurred.” OAR 471-030-0036(5)(b)(B). It is undisputed that claimant was available and actively seeking work during week 21-14.

In sum, claimant was not available for work during weeks 15-14 and 16-14, and was not actively seeking work during weeks 15-14 through 20-14. Thus, claimant is not eligible for benefits for those weeks. Claimant was available for and actively seeking work during week 21-14, and is eligible for benefits for that week.

DECISION: Hearing Decision 14-UI-19022 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, no participating.

DATE of Service: July 28, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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