

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1653-R

Request for Reconsideration Denied

PROCEDURAL HISTORY: On August 15, 2014, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 104403 concluded that claimant did not actively seek work from January 9 through February 15, 2014 (weeks 4-14 through 8-14), and amended decision # 130412 concluded that claimant did not actively seek work from February 16 through February 22, 2014 (week 8-14) and from June 8, 2014 through July 12, 2014 (weeks 24-14 through 28-14).¹ Claimant filed timely requests for hearing. On September 19, 2014, ALJ Vincent conducted a consolidated hearing, and on September 26, 2014 issued Hearing Decisions 14-UI-25973 and 14-UI-25975, affirming the Department's decisions. On October 16, 2014, claimant filed applications for review with the Employment Appeals Board (EAB).

On October 31, 2014, the EAB issued Appeals Board Decisions 2014-EAB-1653 and 2014-EAB-1654, in which it affirmed the hearing decisions under review. On November 20, 2014, claimant submitted written argument. Under the authority granted to us by ORS 657.290(3), we will reconsider Appeals Board Decisions 2014-EAB-1653 and 2014-EAB-1654 to consider claimant's written argument. We have consolidated our reconsideration of these decisions, and, for case-tracking purposes, issued this decision in duplicate (2014-EAB-1653-R and 2014-EAB-1654-R).

CONCLUSION AND REASONS: Claimant's request for reconsideration is denied.

In Appeals Board Decisions 2014-EAB-1653 and 2014-EAB-1654 affirmed hearing decisions² that concluded that claimant failed to actively seek work from January 19 through February 15, 2014 (weeks 04-14 through 07-14), and from February 16 through February 22, 2014 (week 08-14) and from June 8

¹ Amended decision #130412 cancelled an August 11, 2014 administrative decision (also decision #130412) that concluded that claimant did not actively seek work from February 16 through February 22, 2014 and June 8, 2014 through July 19, 2014. On August 28, 2014, claimant requested a hearing on both administrative decisions. OAH opened two cases: case 2014-UI-21670 for administrative decision #130412, and case 2014-UI-21672 for amended decision #130412. By letter dated September 16, 2014, OAH noted that case 2014-UI-21670 was opened in error (because amended decision # 130412 cancelled the previous decision) and closed case 2014-UI-21670.

² Hearing Decisions 14-UI-25973 and 14-UI-25975.

through July 12, 2014 (weeks 24-14 through 28-14). In her written argument, claimant agreed with the ALJ's findings of fact – that the only work seeking activity claimant performed during the weeks at issue was to contact SLD Financial, a business that intermittently employed claimant as a tax preparer during the weeks at issue. Claimant also did not dispute the ALJ's findings that SLD Financial anticipated it would be able to employ claimant full time during the peak tax season, which usually began in the first week of February, and during the period from July through October. (Hearing Decisions 14-UI-25973 and 14-UI-25975). Claimant asserted that “[k]nowing that the Claimant would be back to work in her regular occupation at her regular employer’s office, Claimant did what any ordinary and reasonable person would do in order to return to work at the earliest convenience.” We disagree.

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). For an individual on temporary layoff of four weeks or less from the individual’s regular employer, if the individual had, on the layoff date, been given a date to return to work, the individual is considered actively seeking work if the individual remains in contact with and is capable of accepting and reporting for work with that employer “for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred.” OAR 471-030-0036(5)(b)(A)(February 23, 2014). The ALJ correctly concluded that this rule was inapplicable to claimant’s situation because, when claimant’s hours were reduced and she began working intermittently for SLD Financial, she was given no definite date on which she would be returning to full time work. Accordingly, claimant’s contacts with SLD Financial did not constitute an active work search, and claimant is ineligible to receive benefits during the weeks at issue.

Under OAR 471-041-0145(1), EAB may reconsider a decision to correct an error of fact or law, or to explain any unexplained inconsistency with a Department rule or practice, or an officially stated Department position. For the reasons discussed above, claimant failed to demonstrate that EAB made any error of fact or law that would require reconsideration.

DECISION: Claimant’s request for reconsideration is denied. Appeals Board Decisions 2014-EAB-1653 and 2014-EAB-1654 Hearing Decisions remain undisturbed.

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

DATE of Service: November 25, 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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