

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1692-A

Affirmed
Ineligible for SEA Benefits

PROCEDURAL HISTORY: On August 27, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits through the Self Employment Assistance Program (SEA) (decision # 140516). Claimant filed a timely request for hearing. On October 3, 2014, ALJ Wiperman conducted a hearing, and on October 14, 2014 issued Hearing Decision 14-UI-26928, affirming the Department's decision. On October 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she enclosed certain documents that she did not present at the hearing. Claimant did not explain the reason that she did not offer the new documents into evidence at the hearing or otherwise show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-04-0090(2) (October 29, 2006). Because claimant failed to comply with the applicable regulations, EAB did not consider the new documents when reaching this decision. We considered claimant's argument only to the extent it was based on the record, but those arguments did not change the outcome of this decision for the reasons explained below.

FINDINGS OF FACT: (1) On August 14, 2014, claimant filed an initial claim for unemployment benefits. The Department determined that claimant's claim was valid.

(2) On August 25, 2014, claimant submitted an application to participate in the SEA program, which would allow her to receive benefits while starting a business and pursuing self-employment.. Based on claimant's application, the Department determined that claimant was a "dislocated worker" and was qualified to participate in the SEA program if the business she proposed to start was "feasible," as determined by her responses to various other questions on the application. Audio at ~8:25.

(3) In her application claimant described the business she intended to start as one that would buy, rehabilitate and resell residential properties. Claimant stated in the application that she had no prior experience in selecting residential properties for rehabilitation and in performing the hands-on tasks associated with rehabilitating properties but that she "hope[d] to learn as she went." Audio at ~9:07.

Claimant stated in the application that to finance the business she would need \$100,000 in "seed money" but did not identify where she intended to obtain the funds. Audio at ~ 9:50. In response to a question asking her to identify any assets that she had to fund the business, claimant stated that the business, as planned, had "no need for assets, as explained," but there was no such explanation in the application. Audio at ~10:25, ~15:17. In response to a question that asked claimant to identify any barriers to establishing her proposed business, claimant stated "there are no barriers." Audio at ~ 11:19. At various points throughout the application, claimant emphasized that she needed to "learn the ins and outs" of the real estate investment and property rehabilitation business. Audio at ~11:38. The Department evaluated claimant's application for the feasibility of the business she proposed to start according to a scoring matrix applied to her answers. Based principally on claimant's lack of experience in the areas of buying, rehabilitating and reselling properties and the vague nature of some of her answers, claimant's application was scored at 58 points. Because the Department required a minimum application score of 150 points for entry into the SEA program, claimant's application was denied.

(4) In addition to the information supplied on her application, claimant had established a professional relationship with an experienced and knowledgeable realtor to mentor her in selecting the properties that her business would purchase for rehabilitation and resale. Claimant had also established a professional relationship with an experienced contractor to assist her in rehabilitating properties and to perform the actual work. Claimant had further secured a \$100,000 line of credit for purposes of her business and \$72,000 remained available for use at the time of the hearing.

CONCLUSIONS AND REASONS: Claimant is not eligible for benefits through the SEA program.

ORS 657.156(1) states that the Department shall provide reemployment service assistance to individuals who are otherwise eligible for benefits under ORS 657.150, who are likely to exhaust those benefits and who need assistance to make a successful transition to new employment. ORS 657.158(b) authorizes the Department to provide a self-employment assistance allowance to such individuals to enable them to "establish a business and business and become self-employed." The Department is expressly authorized to adopt rules to carry out the SEA program. ORS 657.158(7). OAR 471-020-0025(5)(c) (July 17, 2005) states that the Department, in consultation with the Oregon Small Business Development Center Network, will review each proposed business for feasibility before allowing an application for SEA benefits.

The Department has determined that the number of claimants able to participate in SEA program at any one time cannot exceed five percent of the Oregon claimants otherwise eligible for unemployment benefits. Claimant Reemployment Services Guide (March 10, 2014) at 2. As distinct from regular benefits, a claimant does not participate as a matter of right in the SEA program or receive SEA benefits. The SEA program is a special reemployment option. The Department has the discretion to determine the criteria that applicants must satisfy and the qualifying thresholds to participate in the SEA program.

From claimant's testimony at hearing, it appears that she planned her business venture with care. While claimant admitted that she had little to no experience in the area in which she proposed to start her new business, it appears that she sought out and developed relationships with experienced professionals whom she believed could overcome her lack of experience. Since claimant submitted the application, she arranged start-up capital for the business. In addition, from the manner in which claimant presented herself at hearing and the substance of her testimony, she was obviously committed

to building a successful business in rehabilitating and reselling houses. Regardless of these considerations, the Department objectively scored claimant's application for entry into the SEA program on a neutral matrix and found that it fell significantly below the qualifying threshold, based principally on her lack of direct experience and the lack of specificity of her application. It is not within our expertise to second guess the correctness of the factors that the Department used to evaluate the feasibility of claimant's proposed business, or to independently conclude that, despite the substance of claimant's application and the Department's determination, her new business was, in fact, feasible. It is sufficient that the Department's decision on claimant's application relied on factors reasonably related to the statutory purposes of SEA. There is insufficient evidence in the record to show that the Department's decision to deny claimant's entry into the SEA program based on lack of experience and the vague nature of the application was arbitrary or an abuse of its discretion.

Based on claimant's application score, claimant is not eligible to participate in the SEA program or to receive SEA benefits.

DECISION: Hearing Decision 14-UI-26878 is affirmed.

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

DATE of Service: December 8, 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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