

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1936**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision #123138) concluding claimant did not actively seek work from June 15, 2014 through July 12, 2014 (weeks 25-14 through 28-14). Claimant filed a request for hearing on October 30, 2014. On November 5, 2014, ALJ Kangas issued Hearing Decision 14-UI-28264, dismissing the claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed. On November 11, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On November 20, 2014, OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 14-UI-28264. On November 26, 2014, OAH issued notice of a hearing scheduled for December 10, 2014. On December 10 and 11, 2014, ALJ Lewis conducted a hearing, and on December 12, 2014 issued Hearing Decision 14-UI-30275, allowing claimant's request for hearing, and concluding claimant did not actively seek work from June 15, 2014 through July 12, 2014. On December 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No party appealed that portion of Hearing Decision 14-UI-30275 allowing claimant's request for hearing. EAB therefore limited its review to claimant's eligibility for benefits from June 15, 2014 through July 12, 2014.

In her written argument, claimant asserted that OAH failed to provide an interpreter who was qualified to interpret in claimant's dialect of her native language and English, and that the interpreter therefore may not have understood claimant's testimony or the ALJ's questions. Claimant also argued that the interpreter would not have told the ALJ if he did not understand claimant's testimony or the ALJ's questions due to cultural reasons. However, the interpreter stated at hearing that he understood the ALJ and the parties. Audio Record (December 10, 2014) at 25:56 to 25:04. Claimant did not object to the interpreter at hearing, or cite any specific instances when the interpretation was inaccurate or the

interpreter's competency prevented him from understanding testimony or questions. Therefore, claimant did not show that problems with interpretation deprived her of a full and fair opportunity to participate in the hearing.

**CONCLUSIONS AND REASONS:** Hearing Decision 14-UI-30275 should be reversed and this matter remanded for additional 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 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). OAR 471-030-0036(5) states that the minimum requirements for an individual to be considered "actively seeking work" are five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual. Examples of work seeking activities include, but are not limited to registering for job placement services with the Department, attending job placement meetings sponsored by the Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5).

In Hearing Decision 14-UI-30275, the ALJ concluded that claimant did not actively seek work from June 15, 2014 through July 12, 2014.<sup>1</sup> To determine whether claimant actively sought work during each of the weeks in issue, the ALJ needed to conduct a full and fair inquiry into the claimant's work seeking activities during each week at issue. The ALJ did not do so. At hearing, the ALJ did not ask claimant about her work search activities for each week at issue other than to ask claimant if the activities she reported on the weekly claim responses (Exhibit 4) were complete. Transcript (December 11, 2014) at 6-7. The work search activities claimant provided on her weekly claim responses show on their face that claimant engaged in less than five total work seeking activities per week. Exhibit 4. Based on claimant's weekly claim responses, the ALJ concluded in Hearing Decision 14-UI-30275 that claimant "made no more than four contacts each week" and therefore was not eligible for benefits for the four weeks at issue because she was not actively seeking work.<sup>2</sup> However, notable regarding claimant's weekly claim responses is that claimant listed only direct contacts with employers, and no other types of work seeking activities. The ALJ did not ask claimant if she engaged in additional work search activities not listed on her weekly claim responses, including activities such as updating a resume or reference list, reviewing newspapers or job placement websites, participating in job placement groups or agencies, and networking through social contacts.

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 was actively seeking work during each week claimed, Hearing Decision 14-UI-30275 is reversed, and this matter is remanded for development of the record.

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<sup>1</sup> Hearing Decision 14-UI-30275 at 5.

<sup>2</sup> *Id.*

**DECISION:** Hearing Decision 14-UI-30275 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: February 9, 2015**

**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](http://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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