

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0173**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 19, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 112014) concluding claimant did not actively seek work from October 5, 2014 to December 6, 2014 (weeks 41-14 through 49-14). Claimant filed a timely request for hearing. On January 28, 2015, ALJ Seideman conducted a hearing, and on January 29, 2015 issued Hearing Decision 15-UI-32580, concluding claimant did not actively seek work from October 5, 2014 through January 3, 2015 (weeks 41-14 through 53-14). On February 17, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 15-UI-32580 is reversed, and this matter remanded for additional proceedings.

To be eligible to receive benefits, an unemployed individual 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 15-UI-32580, the ALJ presumed that claimant did not actively seek work because claimant expected to return to work with his regular employer.<sup>1</sup> However, the record does not support a presumption that claimant limited his work search to only his regular employer, because the record shows claimant reported other employer contacts and engaged in other work search activities unrelated

<sup>1</sup> Hearing Decision 15-UI-32580 at 3.

to his regular employer. 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 claimant's work seeking activities during each week at issue, but did not do so. The ALJ did not ask claimant about his work search activities for any of the weeks at issue or if the activities he reported to the Department when he made his weekly claims were complete. The ALJ did not ask claimant about his employer contacts, or if he engaged in additional work search 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. Absent such inquiries, we cannot determine if claimant actively sought work during any of the weeks at issue.

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 15-UI-32580 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 15-UI-32580 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: April 1, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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