

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0290

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks including December 14, 2014 through January 17, 2015 (weeks 51-14 through 02-15) (decision # 92538). Claimant filed a timely request for hearing. On February 24, 2015, ALJ Seideman conducted a hearing, and on February 25, 2015, issued Hearing Decision 15-UI-34033, affirming the Department's decision. On March 13, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the hearing record and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Consequently, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment benefits on January 31, 2014. He claimed benefits for the weeks including December 14, 2014 through January 17, 2015 (weeks 51-14 through 02-15), the weeks at issue.

(2) Claimant's customary employment for more than 35 years was as a sales and service employee for Lauren Young Les Schwab Tire Centers in Roseburg, OR. At times during the year, the employer's sales volume decreased and claimant was put on what the employer called "temporary layoff" during which claimant worked part-time with substantially reduced hours. During the weeks claimed, claimant was on the employer's so-called "temporary layoff" and worked only part-time hours without a scheduled date for return to full-time work. Audio Record ~ 13:15 to 13:45; 21:00 to 22:15. Claimant's labor market was Roseburg and the surrounding area.

(3) On or about November 28, 2014, the Department mailed and claimant received UI Publication 195 which set forth the Department's work search requirements for benefit eligibility.¹

(4) When filing his each of his benefit claims for the weeks at issue, claimant reported that he was on a temporary layoff but also reported his part-time work hours and earnings without reporting any work search activities. Because working part-time for an employer is inconsistent with even a temporary layoff, during which no work activities are performed, the Department investigated claimant's benefit claims for the weeks at issue.

(5) On or about January 25, 2015, a Department representative spoke with claimant and claimant explained his "temporary layoff" and part-time work for the employer. After the representative explained that to be eligible to receive benefits when working part-time a claimant was required to perform an adequate work search each week, she inquired about his work search activities during the weeks at issue. Claimant told her "he didn't do anything except...keep in touch with his employer and

¹ UI PUB 195 reads in pertinent part:

**Important Eligibility Notice:
These Are Your Work Search Requirements**

If you are:

1. Not expecting to return to work for your last employer:

You must be actively seeking work. This includes full-time, part-time, permanent and temporary work. You must complete at least five work-seeking activities each week you claim benefits. At least two of these activities must be direct contact with employers who might hire you. Other activities can include attending job placement meetings, updating a resume, or searching for jobs online or in the newspaper.

2. Returning to work for your last employer but more than four weeks after you were laid off, or you expect to go back to work for your employer but do not have a definite scheduled return to work date.

You need to stay in contact with your employer. However, you must also begin actively seeking work immediately as described in section 1 above.

3. Laid off and have a definite date to return to full-time work for your employer within four weeks from the end of the week you were laid off:

You are considered actively seeking work if you stay in touch with your employer each week you claim benefits. We will hold your benefit payment for the week you said you would return to work if you claim that week. If you find you will not return to work for your employer or your return to work date has been extended so you will be out of work for more than four weeks, you must contact the unemployment insurance center immediately. Also you must begin actively seeking work as described in section 1 above.

4. Currently working part-time or will be returning to part-time work:

You must begin actively seeking work immediately as described in section 1 above.

UI PUB 195 (01-14)

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.

of course work any hours he could get for those weeks.” Audio Record ~ 9:45 to 10:25. Claimant was not willing to give up his job with the employer. Audio Record ~ 18:20 to 18:50. On January 26, 2015, the Department issued its benefit denial for the weeks at issue after concluding he did not actively seek work.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not actively seek work during the weeks at issue.

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 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).

Where, as here, the Department pays a claimant benefits for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant did not dispute the Department’s evidence that he received UI Publication 195 prior to the weeks at issue or that on or about January 25, 2015, when asked about his work search during those weeks, he told a Department representative “he didn’t do anything except...keep in touch with his employer and of course work any hours he could get for those weeks.” Although he alleged at hearing that he actually searched for work during those weeks and offered subsequently prepared notes of his alleged work searches, we conclude the statement claimant previously gave to the Department is more persuasive regarding his work seeking activities during the period in question than his notes prepared only after he was determined ineligible for benefits because of his statement. More likely than not, claimant did not actively seek work during the weeks at issue. Therefore, he was not eligible for benefits for the weeks including December 14, 2014 through January 17, 2015 (weeks 51-14 through 02-15).

DECISION: Hearing Decision 15-UI-34033 is affirmed.

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

DATE of Service: May 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. 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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