

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0558**

*Modified*  
*Eligible for Benefits Weeks 44-14, 45-14, 49-14 and 51-14*

**PROCEDURAL HISTORY:** On March 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work and was ineligible for benefits from October 5, 2014 through February 14, 2015 (decision # 95931). Claimant filed a timely request for hearing. On April 15, 2015, ALJ Holmes-Swanson conducted a hearing, and on April 24, 2015 issued Hearing Decision 15-UI-37464, concluding claimant actively sought work and was eligible for benefits for the weeks of October 5 through October 25, 2014, November 9 through November 29, 2014, December 7 through December 13, 2014 and December 21, 2014 through February 21, 2015 (weeks 41-14 through 43-14, 46-14 through 48-14, 50-14, and 52-14 through 07-15) but that claimant did not actively seek work and was ineligible for benefits for the weeks of October 26 through November 8, 2014, November 30 through December 6, 2014 and December 14 through December 20, 2014 (weeks 44-14 through 45-14, 49-14 and 51-14). On May 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of that portion of Hearing Decision 15-UI-37464 concluding that claimant actively sought work during weeks 41-14 through 43-14, 46-14 through 48-14, 50-14, and 52-14 through 07-15. We therefore confined this decision to the issue of claimant's eligibility for benefits for weeks 44-14, 45-14, 49-14, and 51-14.

With his written argument, claimant provided additional evidence which consisted of documentation of his work searches for weeks 44-14, 45-14, 49-14 and 51-14. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the information is relevant and material to EAB's determination, and if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing.

Claimant stated that the documentation of his work search for weeks 44-14, 45-14, 49-14 and 51-14 was intended to be part of Exhibit 2, an exhibit that was admitted by the ALJ, but were inadvertently omitted from the exhibit because of an accident. Claimant explained that on the day of the hearing, he left his home to send documentation of his work search to the ALJ by fax. He placed the documents on the roof

of his car so he could help his granddaughter get in the car. Claimant forgot that the documents were on his car roof, and, when he drove off, they scattered in the street. Claimant recovered some, but not all of the documents; apparently missing from the recovered documents were records of claimant's work search for weeks 44-14, 45-14, 49-14 and 51-14. In his written argument, claimant explained that he had "rewritten work searches for that period of time [weeks 44-14, 45-14, 49-14 and 51-14] and attached business cards with their information." Written Argument at 1. The information claimant wants EAB to consider is relevant and material to our determination. The situation that resulted in the scattering of claimant's work search records constitutes circumstances beyond claimant's reasonable control that prevented him from offering these documents at the hearing. We will therefore mark claimant's documentation as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. If the Department objects to the admission of EAB Exhibit 1, it must submit its objections to this office in writing, setting for the basis of the objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for benefits on October 6, 2014. He filed weekly claims for, and was paid, benefits for the weeks including October 26 through November 8, 2014, November 30 through December 6, 2014 and December 14 through December 20, 2014 (weeks 44-14, 45-14, and 49-14 through 51-14), the weeks at issue.

(2) During the week ending November 1, 2014, claimant directly contacted the following potential employers about obtaining work: RV Radiator, Coco's Auto Dismantler, J.J.L. Quality Torque Converters, DGC and Kramer Metals. EAB Exhibit 1.

(3) During the week ending November 8, 2014, claimant directly contacted the following potential employers about obtaining work: Navajo Pallets, Cheaper Pallets, 109 Muffler Shop, Sandblasting Specialist and O'Reilly Auto Parts. EAB Exhibit 1.

(4) During the week ending December 6, 2014, claimant directly contacted the following potential employers about obtaining work: Famcor Fabrics and Supplies, Horizon Personnel Services, Bal-tec, HP Automotive and Eco Houseware. EAB Exhibit 1.

(5) During the week ending December 20, 2014, claimant directly contacted the following potential employers about obtaining work: La Mascota Bakery, Cortez Furniture, Takaokaya, EB Brackley Co. and CWES. EAB Exhibit 1.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ. Claimant actively sought work and is eligible for benefits during weeks including weeks including October 26 through November 8, 2014, November 30 through December 6, 2014 and December 14 through December 20, 2014 (weeks 44-14 through 45-14, 49-14 and 51-14).

To be eligible to receive benefits, unemployed individuals must, among other requirements, actively seek work during each week claimed. ORS 657.155(1)(c). An individual actively seeks 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)(February 23, 2014). OAR 471-030-0036(5)(a) 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)(b).

In Hearing Decision 14-UI-30275, that ALJ found that during each of the weeks at issue, “claimant’s work search only consisted of contacting two employers.” The ALJ then concluded that claimant did not actively seek work during those weeks.<sup>1</sup> However, EAB Exhibit 1 was not included in the record at that time and that exhibit indicates that claimant directly contacted at least 5 potential employers during each of those weeks in an effort to obtain work. The record as a whole shows that he contacted new employers he had not previously contacted rather than limit his work search activities to the same few employers. We cannot conclude that claimant’s work search activities were not reasonably calculated to result in job offers. Accordingly, claimant actively sought work during each of the weeks at issue and is therefore eligible to receive benefits during each of those weeks.

**DECISION:** Hearing Decision 15-UI-37464 is modified, as outlined above. *Decisión de la Audiencia 15-UI-37464 se modifica, de acuerdo a lo indicado arriba.*<sup>2</sup>

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, *pro tempore*, not participating.

**DATE of Service: June 30, 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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**NOTA:** *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

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<sup>1</sup> Hearing Decision 15-UI-37464 at 3.

<sup>2</sup> This decision modifies a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.