

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0630

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 19, 2015, the Oregon Employment Department (the Department) served notices of two administrative decisions, one concluding claimant did not actively seek work during the week January 25 through 31, 2015 (week 04-15) (decision # 111127) and the other concluding claimant did not actively seek work during the weeks February 1 through February 21, 2015 (weeks 05-15 through 07-15) (decision # 110309). Claimant filed timely requests for hearing. On May 5, 2015, ALJ Shoemake conducted a consolidated hearing, and on May 12, 2015, issued Hearing Decision 15-UI-38296, affirming decision # 111127, and Hearing Decision 15-UI-38297, affirming decision # 110309. On May 27, 2015, claimant filed applications for review of Hearing Decisions 15-UI-38296 and 15-UI-38297 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-38296 and 15-UI-38297. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0629 and 2015-EAB-0630).

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 February 5, 2014 (BYE 04-15). Claimant filed a second initial claim for unemployment benefits February 6, 2015 (BYE 04-16). He claimed benefits for the week including January 25 through January 31, 2015 under BYE 04-15 and claimed benefits for the weeks including February 1 through February 21, 2015 (weeks 04-15 through 07-15) under BYE 04-16. These are the weeks at issue.

(2) Claimant's customary employment was as a tree faller for High Country Fallers (HCF), an incorporated business of which he was both an owner and employee. Claimant laid himself off on January 23, 2015, with a return-to-work date of February 23, 2015, in accordance with a request based

on work area conditions by the contractor that had hired HCF. Audio Record ~ 21:45 to 24:30. However, claimant did not actually return to work until February 27, 2015.

(3) In 2014, the Department mailed claimant a Department handbook¹ which set forth the work search requirements for benefit eligibility.² Claimant received, read and understood the Department's work search requirements as set forth in the Department handbook. Audio Record ~13:30 to 14:00, 20:45 to 21:30.

(4) When filing his each of his benefit claims for the weeks at issue, claimant did not report any work search activities. A Department investigator contacted claimant about his benefit claims for the weeks at issue and claimant told the investigator that he believed he did not need to report work searches because he had been temporarily "laid off." Audio Record ~ 21:45 to 22:30. She asked claimant to send in any work searches he had performed despite his belief. Claimant did so and reported to the Department that

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).

² We also take notice of the contents of UI PUB 195, which are 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 facts will remain in the record.

during week 04-15, he engaged one direct employer contact, with HCF, and one work-seeking activity; during week 05-15, he engaged one direct employer contact, with HCF, and two work-seeking activities, and during weeks 06-15 and 07-15 he engaged in one direct employer contact, with HCF, and one work-seeking activity. On March 19, 2015, the Department issued its benefit denials for the weeks at issue after concluding he did not actively seek work for the weeks at issue.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant did not actively seek work and is ineligible for benefits 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) (February 23, 2014). 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)(a). OAR 471-030-0036(5)(b) provides, in pertinent part:

(b) For an individual on temporary layoff of four weeks or less with the individual's regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to work, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. After four calendar weeks have passed following the week in which the temporary layoff occurred, the individual must seek work with other employers in addition to the individual's regular employer.

Where, as here, the Department pays a claimant benefits or gives him waiting week credit 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). The Department met its burden.

Claimant admitted that he understood the Department's work search requirements, but did not conduct work searches in accordance with those requirements during the weeks at issue because he believed he was on a temporary layoff of four weeks or less. However, the period January 23 through February 22, 2015 is 30 days, which is more than four weeks. Accordingly, under OAR 471-030-0036(5), claimant was required to perform a minimum of five work-seeking activities per week, with at least two of those being direct contact with an employer who might hire him. Because he did not, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for the weeks including January 25 through February 21, 2015 (weeks 04-15 through 07-15).

DECISION: Hearing Decisions 15-UI-38296 and 15-UI-38297 are affirmed.

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

DATE of Service: July 17, 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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