

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0643

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks including February 1 through April 4, 2015 (weeks 05-15 through 13-15) (decision # 134417). Claimant filed a timely request for hearing. On May 14, 2015, ALJ Triana conducted an interpreted hearing, and on May 15, 2015, issued Hearing Decision 15-UI-38604 affirming the Department's decision. On May 29, 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 April 18, 2014. In May 2014, the Department mailed claimant a handbook which set forth both the Department's requirements for a claimant to be considered on "temporary layoff" and the differing work search requirements for benefit eligibility whether on "temporary layoff" or not. Transcript at 6-8.

(2) Claimant's customary employment was as a driver for Stahlbush Island Farms (SIF). On January 23, 2015, the employer told claimant that he was being placed "on call" without a return-to-work date. Transcript at 20, 22. The employer did not return claimant to work.

(3) On January 26, 2015, claimant contacted the Department about claiming benefits and a representative told him that he was not on temporary layoff (TLO) under the Department's rules and that he needed to perform the standard search for work for benefit eligibility, which was five work-seeking activities per week, with at least two of those being direct contact with an employer who might hire him. The representative noted her conversation with claimant as follows: "No TLO work search explained." Transcript at 16.

(4) Claimant claimed and received benefits for the weeks including February 1 through April 4, 2015 (weeks 05-15 through 13-15), the weeks at issue. Claimant filed his benefit claims online and when filing each of his claims for the weeks at issue checked a box that indicated that he was on “temporary layoff.” Transcript at 6, 23. Consequently, claimant did not report any work searches when filing his claims.

(5) On February 13, 2015, claimant had a second conversation with a Department representative about filing his claims during which he again was told that he was not on temporary layoff and needed to “have” work searches every week. Transcript at 16. The representative noted their conversation as follows: “PTC advice. He is not TLO and must have his work searches every week. He is on call with no return to work date.” Transcript at 16.

(6) On April 7, 2015, a third Department representative spoke to claimant about his claims for benefits. The following exchange took place: “You did not give any work searches since the week beginning January 25th. You marked each week TLO. Did you look for work? No. I am on call. I don’t have to look for work.” Transcript at 9, 50. Claimant clarified that he had not conducted a work search for any week but week 13-15 but did not have his work search for that week available to him at that time. The representative gave him until April 9 to turn in his work search for that week. Later that day, claimant reported to a Department representative that he had his work search for week 12-15. The search he reported consisted of one direct contact and one work activity. Transcript at 14. On April 14, 2015, the Department issued its claim denial for each of the weeks at issue after concluding claimant did not actively seek work.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant did not actively seek work during each of the weeks at issue and is ineligible for benefits.

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 or credit. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department met its burden. Claimant did not dispute that he was not on “temporary layoff” during the weeks at issue and that he told the Department representative on April 7 that he had not searched for work during those weeks with the exception of one week during which his search for work was not adequate under the rules. Although claimant asserted at hearing that he did perform work searches during the weeks at issue and simply did not understand that he had to report them each week to receive benefits, we conclude that his the answers claimant previously gave to the Department representative on April 7 are more persuasive regarding his actual work search activities than his equivocal testimony given after he was determined ineligible for benefits, in part, because of those answers. Moreover, by correctly filing benefit claims in 2014, claimant demonstrated that he understood the Department’s work search and reporting requirements. Regardless, the work searches claimant reported at hearing were still inadequate under Department rules. Transcript at 26-39, 44.

Claimant did not actively seek work during the weeks at issue and is ineligible for benefits for the weeks including February 1 through April 4, 2015 (weeks 05-15 through 13-15).

DECISION: Hearing Decision 15-UI-38604 is affirmed.

DATE of Service: July 24, 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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