

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0744

Modified
Ineligible Weeks 51-14 through 08-15

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 “for the period December 14, 2014 through March 1, 2015” (weeks 51-14 through 08-15) (decision # 130036). Claimant filed a timely request for hearing. On May 5, 2015, ALJ R. Davis conducted a hearing, and on May 28, 2015, issued Hearing Decision 15-UI-39196, affirming the Department’s decision. On June 1, 2015, issued an amended order, Hearing Decision 15-UI-39345, concluding claimant did not actively seek work “for the period December 14, 2014 through March 7, 2015.” On June 17, 2015, claimant filed an application for review Hearing Decision 15-UI-39345 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 June 26, 2014. She claimed benefits for the period December 14, 2014 through March 1, 2015 (weeks 51-14 through 08-15). These are the weeks at issue.

(2) Claimant’s customary employment was as manager of the gift shop at Camp 18, an historic logging restaurant in Elsie, Oregon. Claimant typically worked 27-30 hours per week, but during the weeks at issue, her hours were reduced to 8-13 hours per week.

(3) At three different times in 2014, the Department mailed and claimant received UI Publication 195¹, which set forth the work search requirements for benefit eligibility.²

¹ UI PUB 195 read in pertinent part:

(4) When filing each of her benefit claims for the weeks at issue, claimant checked the box that stated she was on “temporary layoff” and “[was] returning to full time work within four weeks from when [she] was originally laid off.” Audio Record ~ 11:45 to 12:15. After claimant continued to check the same box for more than four weeks without reporting a work search, a Department investigator contacted claimant about her benefit claims and whether she had sought work during the weeks at issue. Claimant told the investigator that she had maintained contact with her employer, “was waiting to go back to full time work and they said I didn’t have to look.” Audio Record ~ 8:45 to 9:15. She also reported that she had not been given a definite return to work date, was told she would return to Camp 18 “as soon as business picked up” and accordingly had not made direct contact with any other employers seeking work during any of the weeks at issue. Audio Record ~ 9:10 to 9:25.

**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 take notice of these facts, 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.

CONCLUSIONS AND REASONS: We agree with the ALJ in part. We agree that claimant did not actively seek work as required during weeks 51-14 through 8-15 and is ineligible for benefits for those weeks. However, we disagree that the ALJ had jurisdiction over week 09-15 and that claimant is ineligible for benefits for that week.

Jurisdiction. As a preliminary matter, the ALJ took jurisdiction over week 09-15, the week including March 1 through March 7, 2015, after the Department's witness asserted that week was one of the weeks adjudicated in decision # 130036. However, that decision only adjudicated the period December 14, 2014 through March 1, 2015 and the ALJ did not obtain claimant's consent to consider any full weeks beyond February 28, 2015 (week 08-15). Accordingly, the ALJ did not have jurisdiction over week 09-15 in this proceeding.

Active Work Search. 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)(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)(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 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 for the weeks at issue over which the ALJ had jurisdiction.

Claimant did not dispute that she received the Department's Publication 195 or that she understood the Department's work search requirements set forth therein but asserted she did not conduct a search for work during the weeks at issue beyond contacting her employer because she believed she was on a temporary layoff and was not required to. Audio Record ~ 16:00 to 17:00. However, claimant continued to work part-time and receive wages for her labor during each of the weeks at issue. A claimant who continues to work part time is not "on temporary layoff" within the meaning of OAR 471-030-0036(5). Thus, the work search exception contained in OAR 471-030-0036(5)(b) does not apply.

Accordingly, under OAR 471-030-0036(5)(a), 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 her. Because she did not, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for the weeks including December 14, 2014 through February 28, 2015 (weeks 51-14 through 08-15). Week 09-15 remains unadjudicated.

DECISION: Hearing Decision 15-UI-39345 is modified, as outlined above.

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

DATE of Service: August 4, 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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