

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0790

Hearing Decision 15-UI-40043 - Affirmed
Hearing Decision 15-UI-40044 - Affirmed
Hearing Decision 15-UI-40045 - Affirmed
Ineligible

PROCEDURAL HISTORY: On April 28, 2015 the Oregon Employment Department (the Department) served notice of three administrative decisions, the first concluding that claimant did not actively seek work during the weeks of November 30, 2014 through February 21, 2015 (decision # 140751), the second concluding that claimant did not actively seek work during the weeks of March 1, 2015 through March 28, 2015 (decision # 143602) and the third concluding that claimant did not actively seek work during the weeks of April 5, 2015 through April 25, 2015 (decision # 144425). Claimant filed timely requests for hearing on all three decisions. On June 10, 2015 ALJ Holmes-Swanson conducted a consolidated hearing, and on June 15, 2015 issued Hearing Decision 15-UI-40043, affirming decision # 140751, Hearing Decision 15-UI-40045, affirming decision # 143602, and Hearing Decision 15-UI-40044, affirming decision # 144425. On July 1, 2015, claimant filed applications for review of all three hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-40043, 15-UI-40044 and 15-UI-40045. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 15-EAB-0790, 15-EAB-0791 and 15-EAB-0792).

FINDINGS OF FACT: (1) Until sometime before December 5, 2014, claimant worked as a packer for moving companies through Barrett Business Services, an employee staffing agency. The business of the moving companies slowed as winter approached and they no longer needed claimant's packing services.

(2) On December 5, 2014, claimant filed an initial claim for unemployment insurance benefits. Claimant's claim was determined valid. Claimant claimed benefits for the weeks of November 30, 2014 through February 21, 2015, March 1, 2015 through March 28, 2015 and April 5, 2015 through April 25, 2015 (weeks 49-14 through 07-15, weeks 09-15 through 12-15 and weeks 14-15 through 16-15), the weeks at issue. The Department paid claimant benefits for weeks 50-14 through 06-15 and week 09-15.

(3) When claimant filed his initial claim by phone on December 5, 2014, he was advised by a Department representative that to remain eligible to receive benefits, he needed to conduct five work seeking activities during each week for which he claimed benefits. Shortly after claimant filed his initial claim, the Department sent to him a publication that outlined his obligation to perform five work-seeking activities during each week that he claimed benefits, and stated that those activities must include at least two direct contacts with employers who were hiring and gave examples of other acceptable work-seeking activities, such as attending job placement meetings, updating a resume or searching for jobs online or in newspapers. Shortly after December 5, 2014, the Department mailed a handbook to claimant also advising him of the requirement that he perform five work-seeking activities during each week for which he claimed benefits and gave examples of suitable work-seeking activities.

(4) During the weeks at issue, claimant sought work only as a packer for a moving company. During each of the weeks at issue, claimant reported his work seeking activities as contacting Barrett Business Services, Eastside Moving & Storage and Westside Moving & Storage for work as a packer. Claimant did not report any work-seeking activities other than directly contacting either two or three of the same three employers. Audio at ~11:35, ~16:26, ~19:46, ~21:00, ~21:50.

(5) During the weeks at issue, claimant thought his age prevented him from doing any work for moving companies other than as packer due to the heavy lifting requirements of other positions in the moving field. Claimant knew that Eastside and Westside hired or used employees only to perform packing work. Claimant did not contact any potential employers other than Eastside, Westside or Barrett Business Services (through which he sought assignments to Eastside or Westside as a packer) because he thought that all other businesses that provided moving services in the Portland, Oregon metropolitan area would not hire or use an individual to perform only specialized packing work, but would require all individuals they hired or used to perform all-round moving work in addition to packing.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks of November 30, 2014 through February 21, 2015, March 1, 2015 through March 28, 2015 and April 5, 2015 through April 28, 2015. Claimant was not eligible to receive benefits during those weeks.

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). For purposes of 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). With few exceptions, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B).

At hearing, claimant did not dispute that he made at most three employer contacts each week as the total of his work-seeking activities. Claimant also did not dispute that he was aware during the weeks at issue that the Department's regulations required him to perform five work-seeking activities rather than only three. During the weeks at issue, claimant was not on a temporary lay-off of four weeks or less from his regular employer and was not a union member, which under appropriate circumstances, would exempt

him from the requirement of performing five work-seeking activities for each week that he claimed benefits. Audio at ~20:56, ~24:30; OAR 471-030-0036(5)(b)(A); OAR 471-030-0036(5)(d).

Claimant's position at hearing was, in essence, that he satisfied all work-seeking requirements because, each week, he contacted the only two employers in the Portland area (either directly or through Barrett Business Services) who hired individuals to work exclusively as packers. Audio at ~19:46, ~21:50, ~23:00, ~25:30, ~26:04. However, with the exception of individuals on temporary lay-off or union members, OAR 471-030-0036(5) does not exempt any individual from the five work-seeking activities requirement unless the Department has modified the work-seeking activities requirement for that particular individual. OAR 471-030-0036(5)(f). Claimant did not present any evidence that he requested a modification of the work-seeking requirements that were otherwise applicable to him from the Department or that the Department consented to such a modification. The language of OAR 471-030-0036(5)(a)(B) is mandatory and claimant does not fall within any exception to its operation. By claimant's concessions at hearing that he failed to perform five work-seeking activities during each of the weeks at issue, claimant demonstrated that he was ineligible to receive benefits for those weeks.

DECISION: Hearing Decisions 15-UI-40043, 15-UI-40044 and 15-UI-40045 are affirmed.

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

DATE of Service: August 14, 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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