

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1007

Modified
Ineligible Weeks 16-15 through 20-15, and Weeks 22-15 and 23-15
Eligible Week 21-15

PROCEDURAL HISTORY: On June 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from April 19 through June 13, 2015 (decision # 84209). Claimant filed a timely request for hearing. On August 5, 2015, ALJ R. Davis conducted a hearing, and on August 13, 2015 issued Hearing Decision 15-UI-42950, concluding that claimant was able to work but did not actively seek work, from April 19 through June 13, 2015. On August 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

No party appealed that portion of Hearing Decision 15-UI-42950 concluding that claimant was able to work from April 19 through June 13, 2015. EAB therefore limited its review to whether claimant actively sought work during that period.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from April 19 through June 13, 2015 (weeks 16-15 through 23-15), the weeks at issue.

(2) Claimant worked as a welder for Western Pneumatics until April 1, 2015. After April 1, 2015, claimant was unable to perform welding work that required him climb ladders or kneel. Western Pneumatics informed claimant that it could not accommodate his work restrictions, and therefore had no work available for claimant until he was released to work with no restrictions. Claimant was not released to work with no restrictions during the weeks at issue.

(3) During weeks 16-15 through 20-15, claimant remained in contact with and was capable of accepting and reporting for any work with Western Pneumatics that complied with his work restrictions. Western Pneumatics continued to inform claimant that it could not accommodate his work restrictions, and therefore had no work available for claimant until he was released to work with no restrictions. Claimant did not contact any other potential employers during weeks 16-15 through 20-15.

(4) During week 21-15, claimant inquired about job openings with Mohawk Metal Company and Pacific Metal Fabrications. Both employers informed claimant that they could not accommodate his work restrictions. Also during week 21-15, claimant updated his resume, and reviewed job placement websites on two separate days.

(5) During week 22-15, claimant inquired about job openings with L & M Industrial Fabrication, and again with Mohawk Metal Company. Both employers informed claimant that they could not accommodate his work restrictions. Claimant did not contact any other potential employers during week 22-15.

(6) During week 23-15, claimant again inquired about job openings with Western Pneumatics and L & M Industrial Fabrication. Both employers informed claimant that they could not accommodate his work restrictions. Claimant did not contact any other potential employers during week 23-15.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work during weeks 16-15 through 20-15, and weeks 22-15 and 23-15. However, we disagree with the ALJ and conclude that claimant actively sought work during week 21-15.

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, none of which apply here, 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.* Work seeking activities include updating a resume, reviewing job placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5)(a)(A). "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).

During weeks 16-15 through 20-15, claimant engaged in only one work seeking activity, remaining in contact with being capable of accepting and reporting for any work with Western Pneumatics that complied with his work restrictions. Claimant therefore did not actively seek work as defined under OAR 471-030-0036(5)(a), and is ineligible for benefits for weeks 16-15 through 20-15.

In Hearing Decision 15-UI-42950, the ALJ concluded that claimant did not actively seek work during weeks 21-15 through 23-15 because he did not contact two "new and potential" employers during each of those weeks.¹ During week 21-15, however, claimant inquired about job openings with Mohawk Metal Company and Pacific Metal Fabrications. Claimant therefore made direct contact with two employers who might have hired him, as required under OAR 471-030-0036(5)(a). Claimant also conducted three other work seeking activities during week 21-15, updating his resume, and reviewing job placement websites on two separate days. Claimant therefore conducted five work seeking activities during week 21-15, and is eligible for benefits for those weeks.

However, we agree that claimant did not actively seek work during weeks 22-15 and 23-15. Although claimant was not required under OAR 471-030-0036(5)(a) to contact two "new" potential employers

¹ Hearing Decision 15-UI-42950 at 3.

each week, he was required to make direct contact with two employers that “might” have hired him. During week 22-15, claimant made direct contact with two employers, L & M Industrial Fabrication and Mohawk Metal Company. However, Mohawk Metal Company already had informed claimant that it could not accommodate his work restrictions. Claimant therefore made direct contact with only one employer that might have hired him. Likewise, during week 22-15 claimant made direct contact with two employers, Western Pneumatics and L & M Industrial Fabrication. However, both employers already had informed claimant that they could not accommodate his work restrictions. Claimant therefore did not make direct contact with any employers that might have hired him. Claimant therefore did not actively seek work during weeks 22-15 and 23-15, and is ineligible for benefits for those weeks.

In sum, claimant did not actively seek work during weeks 16-15 through 20-15, and weeks 22-15 and 23-15. He therefore is ineligible for benefits for those weeks. However, claimant actively sought work during week 21-15, and is eligible for benefits for those weeks.

DECISION: Hearing Decision 15-UI-42950 is modified, as outlined above.

Susan Rossiter and J. S. Cromwell.

DATE of Service: September 22, 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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