

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1032-R

Reconsidered On Our Own Motion
Appeals Board Decision 2015-EAB-1032 Adhered to on Reconsideration

PROCEDURAL HISTORY: On May 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 125451) concluding that claimant did not actively seek work from November 30, 2014 through January 31, 2015 (weeks 49-14 through 4-15). Claimant filed a timely request for hearing. On July 29, 2015, ALJ R. Davis conducted a hearing, and on August 13, 2015, issued Hearing Decision 15-UI-42969, affirming the administrative decision. On August 26, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On September 4, 2015, EAB issued Appeals Board Decision 2015-EAB-1032, affirming Hearing Decision 15-UI-42969.

On September 24, 2015, the deadline for filing a timely request for reconsideration with EAB expired. On October 5, 2015, the deadline for filing a Petition for Judicial Review of Appeals Board Decision 2015-EAB-1032 with the Oregon Court of Appeals expired, and that decision became final. On October 14, 2015, claimant filed a request for reconsideration with EAB. Claimant's request was filed late, and is therefore subject to dismissal under OAR 471-041-0145(2)(b).

In her request for reconsideration, however, claimant assigned error to EAB's service of Appeals Board Decision 2015-EAB-1032 on September 4, 2015, before her written argument was due. Claimant argued, "The date of my original decision is August 26th, I should have been given 20 days from then and then 30 days from that date to submit my argument for the process." We agree with claimant that EAB issued a decision in her case before the written argument deadline lapsed. However, we disagree with claimant about the written argument deadline applicable in her case. Hearing Decision 15-UI-42969 was mailed on August 13, 2015. Claimant had 20 days from that date to file her application for review, and did so on August 26, 2015.¹ On August 31, 2015, EAB mailed claimant a letter titled "Notice of Receipt of Application for Review," acknowledging receipt of her valid and timely

¹ See ORS 657.270(6) (parties have 20 days after the hearing decision date to file an application for review).

application for review.² Claimant had 20 days from the date of that letter to submit a timely written argument.³ Therefore, the written argument deadline expired on September 24, 2015. Because EAB's premature issuance of Appeals Board Decision 2015-EAB-1032 appears to have contributed to the circumstances that preempted claimant's opportunity to submit a timely argument, under the authority granted to us by ORS 657.290(3), we will reconsider Appeals Board Decisions 2015-EAB-1032 on our own motion.⁴

OAR 471-030-0036(5) provides that, unless an individual is on a temporary layoff of four weeks or less and has been given a date to return to work, the individual "shall be 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." "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).

Claimant argued:

I feel like I have been unfairly treated from the beginning of this process, from the start . . . For example at the local office for a REA meeting at the beginning of my claim, the OED employee stated that I told her that I would be off for up to 7 weeks and that could not have been discussed because when I meet [*sic*] with her there would have been no way I could of [*sic*] known the length of time at that meeting, at that meeting I was expected to be off for 3 weeks, so I never would have said 7 weeks.⁵

However, even if we concluded the Department's evidence about claimant's layoff from regular employment was inaccurate and disregarded it, the outcome of this matter would remain the same. Claimant is the one who testified at the hearing that she did not believe that the four-week-or-less layoff exemption applied to her circumstances, and testified that she did not claim to have been laid off during the weeks at issue. Audio recording at ~ 16:25. Therefore, based on claimant's own testimony, claimant was not exempt from the requirement that she make "direct contact" with two employers each week "to inquire about a job opening or applying for job openings in the manner required by the hiring employer." Claimant also testified at the hearing that she did not apply for any jobs during the weeks at issue. Audio recording at ~ 22:55. Although claimant looked for work during the weeks at issue, she

² OAR 471-041-0075 requires EAB to mail or email the acknowledgment to the parties.

³ See OAR 471-041-0080 (a party's written argument must be received within 20 days of the date the acknowledgment required by OAR 471-041-0075).

⁴ Under ORS 657.290(3), EAB may reconsider any of its previous decisions, irrespective of whether it has become final.

⁵ Claimant also submitted new information, a letter from her employer about the circumstances of her layoff during the relevant period. The new information cannot be admitted into the record or considered by EAB, however, because claimant did not establish for purposes of OAR 471-041-0080(2)(b) that factors or circumstances beyond her reasonable control prevented claimant from submitting the new information into the record during the hearing proceedings with the ALJ. EAB provided claimant with a copy of the rule governing submission of new information with the Notice of Receipt of Application for Review that was mailed to her on August 31, 2015.

also testified that none of the jobs available suited her hour and wage requirements so she did not make contact with any employers.

Because claimant was not on a temporary layoff of four weeks or less and had not been given a return to work date, and she did not make two direct contacts with hiring employers during the weeks she claimed benefits, we must conclude that claimant did not actively seek work during the weeks claimed. Therefore, she was ineligible for benefits during those weeks. EAB did not err in affirming Hearing Decision 15-UI-42969.

Finally, in her request for reconsideration, claimant asked EAB to contact her regarding "the next step" in this matter. If claimant disagrees with this decision, the next step available to her is to appeal this decision to the Oregon Court of Appeals. Instructions for filing a Petition for Judicial Review with the Oregon Court of Appeals are printed, below. The process is time-sensitive. We also note that Department records show that administrative decision # 125451, which this decision re-affirms, resulted in an overpayment to claimant, as well as the assessment of a monetary penalty and penalty weeks, which appears to have become final without a request for hearing having been filed.⁶ If claimant has any questions about that matter, would like to speak with a Department employee about how to repay the overpayment and serve the penalty weeks, or would like information about filing a late request for hearing in that matter, the next step available to her is to contact the Investigations Unit at (503) 947-1980 or call the Department toll free at (877) 345-3484.

DECISION: On reconsideration, we adhere to Appeals Board Decision 2015-EAB-1032, as clarified herein.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 15, 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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⁶ We take notice of this fact, which is 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 fact will remain in the record.