

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1329

Affirmed
Ineligible

PROCEDURAL HISTORY: On July 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from May 24 through July 4, 2015 (decision # 131936). Claimant filed a timely request for hearing. On October 12, 2015, ALJ Holmes-Swanson conducted a hearing, and on October 20, 2015 issued Hearing Decision 15-UI-46194, affirming the Department's decision. On November 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant's written argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (October 29, 2006). EAB therefore did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from May 24 through July 4, 2015 (weeks 21-15 through 26-15), the weeks at issue.

(2) In mid-May 2015, claimant was temporarily laid off from work by his regular employer, the Oregon Symphony, until September 2015. Claimant was the member of a union that allowed members to seek non-union work.

(3) Claimant contacted his regular employer during week 21-15 and maintained contact with his union during his entire layoff period, during which he also contacted three other employers.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must 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). Individuals, including those on temporary layoff of more than four weeks with their regular employer, typically 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.*; OAR 471-030-0036(5)(c). "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). For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union. OAR 471-030-0036(5)(d). Where, as here, the Department initially pays a claimant benefits, 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).

During the weeks at issue, claimant was on temporary layoff of more than four weeks with his regular employer, and his union allowed members to seek non-union work. Claimant therefore was required to make at least two direct contacts with employers who might hire him during each week claimed. Claimant's contact with his regular employer during week 21-15 does not count toward the minimum requirement for that week because the record fails to show claimant inquired about a job opening or applied for job openings, or that there was a possibility that his regular employer would allow him to return to work before September 2015. Claimant therefore made, at most, three direct contacts with employers who might hire him during his entire layoff period, which included several weeks before and after the six weeks at issue. Claimant did not assert, and the record fails to show, that he made at least two of those contacts during the same week at issue. *See* Transcript at 16. We therefore find it unlikely that claimant actively sought work during any of the weeks at issue, and conclude that he is ineligible for benefits for those weeks.

DECISION: Hearing Decision 15-UI-46194 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: December 11, 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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