

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1349

Reversed & Remanded

PROCEDURAL HISTORY: On September 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (# 152549) concluding that claimant did not actively seek work from July 12 through September 19, 2015 (weeks 28-15 through 37-15). Claimant filed a timely request for hearing. On October 26, 2015, ALJ M. Davis conducted a hearing, and on October 27, 2015 issued Hearing Decision 15-UI-46582, concluding that claimant did not actively seek work from July 12 through September 26, 2015 (weeks 28-15 through 38-15). On November 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

CONCLUSION AND REASONS: Hearing Decision 15-UI-46582 should be reversed, and this matter remanded for development of the record.

This matter comes before EAB to determine whether, on the facts developed at the hearing, claimant is ineligible to receive unemployment benefits because she did not actively seek work. To be eligible to receive benefits, unemployment 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, 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.* "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 issue in Hearing Decision 15-UI-46582 was the adequacy of claimant's work search

during the weeks at issue, weeks 28-15 through 38-15. The ALJ found that claimant was ineligible to receive benefits because she failed to make at least two direct employer contacts during the weeks at issue. Hearing Decision 15-UI-46582 at.

Under ORS 657.270, the ALJ is required to give all parties a reasonable opportunity for a fair hearing. Where, as here, a party is unrepresented, that obligation necessarily requires that the ALJ ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). The record in this case must be remanded because to develop a record that demonstrates a full and fair inquiry into the facts.

The Department's representative determined that claimant's work search was inadequate during week 28-15 because claimant's only employer contact consisted of a telephone interview and a personal meeting with the same prospective employer. Audio Recording at 8:17. The Department representative also determined that claimant's work search during weeks 35-15 through 37-15 was inadequate claimant contacted the same two employers –Dutch Brothers and Specialty Maintenance – during each of these weeks. The Department representative testified that “it doesn't make sense” to repeatedly contact the same employers. Audio Recording at 27:51. We note that the ORS 657.155(1)(c) requires an individual to make two direct contacts each week “with an employer who might hire the individual.” Neither this statute nor the applicable administrative rule, OAR 471-030-0036(5)(a)(B), specifies that these must be weekly contacts with two *different* employers. On remand, the ALJ must ask the Department's representative to explain more fully the Department's interpretation of ORS 657.155(1)(c): that the statute requires an individual to make at least two weekly contacts with at least two different employers. In addition, the ALJ should ask the Department representative if the Department informed claimant about its interpretation of the statute, and, if so, how this information was communicated to her.

Claimant reported that during week 30-15, her work search consisted of a “self-employed referral for housecleaning.” When the ALJ asked claimant to explain what this phrase meant, claimant's answer was non-responsive. Audio Recording at 9:00. On remand, the ALJ should attempt to ask claimant what was a “self-employed referral for housecleaning” and whether it involved any direct employer contacts.

Finally, the record shows that claimant worked for one of the employers she contacted; the Department representative testified that claimant reported 8 hours of work and earnings of \$120 during one of the weeks at issue. Audio Recording at 26:38. It is unclear from the testimony, however, when claimant performed this work and for which employer the work was performed. On remand, the ALJ should ask the Department representative for more specific information about earnings claimant may have reported: what employer she worked for, what she earned, and when she reported the earnings. In addition, the ALJ should ask the Department representative to explain its position that working for an employer does not constitute an employer contact with the meaning of ORS 657.155(1)(c).

For the above reasons, we conclude that a more full inquiry is needed into the circumstances of claimant's work search activities. We therefore remand this matter to the Office of Administrative Hearings for further development of the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-46582 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 15-UI-46582 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell.

DATE of Service: December 18, 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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