

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1388-R

*On Reconsideration, Hearing Decision 15-UI-47474 is Affirmed
Ineligible*

PROCEDURAL HISTORY: On August 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from June 14, 2015 to August 1, 2015 (decision # 75345). On September 1, 2015, decision # 75345 became final without a request for hearing having been filed. On October 2, 2015, claimant filed a late request for hearing. On November 2, 2015, ALJ Vincent conducted a hearing, and on November 10, 2015 issued Hearing Decision 15-UI-47474, concluding that claimant filed a timely request for hearing, and that claimant had good cause for filing a late request for hearing, and affirming decision # 75345. On November 24, 2015, claimant filed a timely application for review with the Employment Appeals Board (EAB). On December 1, 2015, EAB issued Appeals Board Decision 2015-EAB-1388, affirming Hearing Decision 15-UI-47474. On December 16, 2015, claimant filed a request for reconsideration with EAB.

In claimant's request for reconsideration, he assigned error to EAB's issuance of EAB Decision 2015-EAB-1388 before the deadline for claimant to submit her argument expired. We agree. On claimant's request, and under the authority granted to us by ORS 657.290(3), and pursuant to OAR 471-041-0145, we will reconsider Appeals Board Decision 2015-EAB-1388 to consider claimant's written argument.

CONCLUSIONS AND REASONS: On reconsideration, we adhere to Appeals Board Decision 2015-EAB-1388.

In written argument, claimant complained that "[t]he record on review in this case should have included the letter" claimant submitted to the Department, and asked that EAB consider the letter as evidence. However, the notice of hearing stated that only documents included with the notice would be considered by the ALJ, and claimant did not specify whether or not the letter to which he referred was included with the notice of hearing. Even if it was, the record fails to show that claimant mentioned the letter to the ALJ or asked that the ALJ consider it when reaching his decision. The thus record fails to show that the ALJ erred by failing to consider claimant's letter. The other circumstance under which EAB may consider a party's new information occurs if the party establishes that factors or circumstances beyond

the party's reasonable control prevented the party from presenting the evidence in the hearing. *See* OAR 471-041-0090. Because claimant's argument did not include any explanation about why he did not ask the ALJ to include his letter as an exhibit, claimant did not meet that requirement. EAB will, therefore, not consider claimant's letter. Even if we had, the outcome of this decision would remain the same for the reasons that follow.

Claimant next argued that OAR 471-030-0036(5)(a), the provision that requires individuals to actively seek work in order to be eligible for benefits, and OAR 471-030-0036(5)(b), the provision that excuses individuals on temporary layoff from work under certain circumstances, do not apply to claimant, but that OAR 471-030-0036(5)(d) did. In support, claimant claimed in his argument that he was "a member of a union which does not allow its members to seek non-union work," and, as such, he was "actively seeking work" just by maintaining contact with his union during the weeks at issue.

We agree with claimant's interpretation of OAR 471-030-0036(5)(d) that members of closed unions are excused from seeking work with other employers so long as they remain in contact with their unions. We also agree with claimant that claimant was a member of Teamsters Local 206, which is, generally speaking, a closed union that does not allow members to seek work outside the union. The record shows, however, that the single exception to the closed-hall requirement was for bus drivers, who were, unlike other Teamsters Local 206 members, permitted to seek work with any employer. Claimant testified repeatedly to that effect during the hearing. Audio recording at ~17:00, 29:40. Therefore, the record shows that claimant was not "a member of a union which does not allow its members to seek non-union work." Rather, he was a member of a union which *did* allow its bus driver members to seek non-union work. Because claimant was not a member of a closed-hall union, OAR 471-030-0036(5)(d) does not apply.¹

The only other provision in the applicable rules under which claimant might be exempt from the Department's requirement that he actively seek work as a condition of benefit eligibility is OAR 471-030-0036(5)(b), which exempts certain individuals on temporary layoff from regular employment from having to seek work with other employers. As claimant testified, and argued in his written argument, claimant did not meet the requirements of that exemption.

Because claimant was not exempt from actively seeking work under either OAR 471-030-0036(5)(b) or (d), he was required, as a condition of benefit eligibility, to actively seek work pursuant to OAR 471-030-0038(5)(a) by conducting at least five work seeking activities per week, including two direct contacts with an employer who might actually hire him. The record shows that during the weeks at issue, claimant confined his work seeking activities to maintaining contact with his union and his regular employer. His work search was, therefore, inadequate, and he is not eligible to receive benefits from June 14, 2015 to August 1, 2015. EAB did not err in so deciding.

DECISION: On reconsideration, Hearing Decision 15-UI-47474 is affirmed.

Susan Rossiter and J. S. Cromwell

¹ The letter to which claimant's first argument referred included claimant's assertion that he was a member of a closed-hall union. Because claimant's testimony contradicted his statement in the letter, admitting the letter into evidence would not have changed the outcome in this case.

DATE of Service: December 21, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.