

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-1623

*Reversed & Remanded*  
*(Revocada y Regresada)*

**PROCEDURAL HISTORY:** On October 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 113845) concluding that claimant did not actively seek work from August 31 through October 18, 2014 (weeks 36-14 through 42-14). Claimant filed a timely request for hearing. On December 8, 2014, ALJ Frank conducted a hearing, and on December 12, 2014, issued Hearing Decision 14-UI-30301, affirming the administrative decision. On January 2, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument that 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. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. In addition, we note that the information claimant sought to present to EAB – his wife's application for medical leave – appears to have no relevance to the issue in this case.

**CONCLUSION AND REASONS:** Hearing Decision 14-UI-30301 should be reversed and this matter remanded for additional proceedings.

This matter comes before EAB to determine whether claimant was eligible for benefits from August 31, through October 18, 2014 (weeks 36-14 through 42-14). To be eligible to receive benefits, unemployed individuals must be able to work, available for work and actively seek work during each week claimed. ORS 657.155(1)(c). There appears to be no dispute that claimant was able to and available for work during the weeks at issue. Accordingly, we confine our review to the issue of whether claimant actively sought work during the weeks at issue. Under 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) (February 23, 2014).

The work search requirements are different, however, for an individual on a temporary layoff of four weeks or less from the individual's regular employer, OAR 471-030-0036(5)(b) provides that:

if the individual had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. The individual no longer meets the requirements of this subsection if four calendar weeks have passed following the week in which the temporary layoff occurred, therefore the individual must seek work consistent with subsection (a) of this section in addition to the individual's regular employer.

The record shows that on September 3, 2014, claimant was laid off from his job with his regular employer, ABM; he then returned to work for ABM on October 20, 2014. Transcript at 6 and 7. The Department representative asserted that "[w]hen Claimant was laid off from his job with ABM he did not have a return-to-work date within four weeks of the layoff date." Transcript at 6. The record fails to show, and the ALJ did not ask, about any evidence to support this assertion. In particular, the ALJ did not ask the Department representative about Department records concerning claimant's understanding of his return-to-work date. Nor did the ALJ ask the representative if the Department had any records of the September 5, 2014 conversation a Department representative had with claimant, and if so, what those records showed.<sup>1</sup> Finally, the ALJ failed to ask claimant what he was told on the date ABM laid him off, whether he was given a definite date on which he would be returning to work, whether the work to which he would return would be full time and, if not, what he would be paid.<sup>2</sup>

ORS 657.270 requires that the ALJ give all parties a reasonable opportunity for a fair hearing. 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 ALJ failed to develop the record necessary for a determination of whether claimant had been given, on the date he was laid off, a definite return to work date within four weeks of the layoff date. Without this information, the adequacy of claimant's work search cannot be properly determined. Hearing Decision 14-UI-30301 is reversed, and this matter is remanded for development of the record.

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<sup>1</sup> The services of a certified Spanish interpreter were used at the December 8, 2014, hearing. It is therefore important that the ALJ ask whether the Department representative spoke in Spanish with claimant on September 5 or used an interpreter. If the conversation was not conducted in Spanish, then it is important that the ALJ ask if claimant understood what he was told.

<sup>2</sup> If the inquiry shows that the work to which claimant was expected to return was less than full-time, then the ALJ should ask the Department representative what was claimant's weekly benefit amount.

**DECISION:** Hearing Decision 14-UI-30301 is set aside, and this matter remanded for further proceedings consistent with this order. *Decisión de la Audiencia 14-UI-30301 de la audiencia, y esta materia se remite para otros procedimientos constantes con esta orden.*

Susan Rossiter and J.S. Cromwell;  
Tony Corcoran, not participating.

**DATE of Service: January 9, 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 website at [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros, (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [court.oregon.gov](http://court.oregon.gov). En este sitio web, haga clic en “Help” para acceso a información en español.*

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