

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0084-R

Reconsideration Granted
Appeals Board Decision 2016-EAB-0084 Adhered to on Reconsideration

PROCEDURAL HISTORY: On December 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits for the week November 1 through November 7, 2015 (week 44-15) because he failed to participate in a required Reemployment and Eligibility Assessment (REA). Claimant filed a timely request for hearing. On December 30, 2015, ALJ Seideman conducted a hearing, and on January 6, 2016, issued Hearing Decision 16-UI-50514, concluding claimant was not eligible for benefits for the weeks of November 1 through November 28, 2015 (weeks 44-15 through 47-15) for failure to participate in a required REA. On January 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On February 16, 2016, EAB issued Appeals Board Decision 2016-EAB-0084, affirming the hearing decision under review.

Also on February 16, 2016, claimant submitted written argument to EAB. We will exercise our authority under ORS 657.290(3) to reconsider our decision to address some of the issues raised in claimant's written argument.

In Hearing Decision 16-UI-50514, the ALJ concluded that claimant was ineligible for benefits for the weeks of November 1 through November 28, 2015 because he did not participate in a required REA interview, a program which is part of the job placement and reemployment services offered by the Department. In support of his conclusion, the ALJ cited ORS 657.155(1)(a), which provides that an unemployed individual is eligible for benefits if, among other requirements, the individual has "registered for work at and thereafter has continued to report at an employment office in accordance with such rules as the director may prescribe." The ALJ also cited ORS 657.156(2), which provides that certain individuals whom the Department identifies as likely to exhaust unemployment benefits will be

referred to and must participate in reemployment programs in order to be eligible for unemployment benefits. In his written argument, claimant objected to the ALJ's application of ORS 657.156, noting that the Department found claimant ineligible under ORS 657.155(1)(a), and that at the hearing, the ALJ stated that the issue was whether claimant was ineligible for unemployment benefits under ORS 657.155(1)(a). Claimant asserted that the ALJ, "contrary to the most basic principle of procedural due process, the right to notice and a hearing, elected to base his opinion on ORS 657.156." Written Argument at 3.

In our *de novo* review of Hearing Decision 15-UI-50514 pursuant to ORS 657.275(2), we held that claimant violated ORS 657.155(1)(a) by his admitted failure to participate in the REA program, even after he was advised of the need to do so. By basing our conclusion on this statute, we rejected the ALJ's partial reliance on ORS 657.156(3). Accordingly, we find no error of fact or law that would require correction on reconsideration. See ORS 657.290 (reconsideration by the EAB may include making a new decision "to the extent necessary and appropriate for the correction of a previous error of fact or law.")

DECISION: Reconsideration is granted. Hearing Decision 16-UI-50514 is adhered to on reconsideration.

Susan Rossiter and J. S. Cromwell;
D. H. Hettle, not participating.

DATE of Service: February 18, 2016

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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