

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0151

Modified
Ineligible Weeks 29-15 and 34-15 through 46-15
Eligible Weeks 32-15 and 33-15

PROCEDURAL HISTORY: On December 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from July 19 through 25, 2015 and August 9 through November 21, 2015 (decision # 151116). Claimant filed a timely request for hearing. On January 22, 2016, ALJ Dorr conducted a hearing and issued Hearing Decision 16-UI-51578, affirming the Department's decision. On February 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed and received waiting week credit or benefits for the week of July 19 through 25, 2015 (week 29-15) and from August 9 through November 21, 2015 (weeks 32-15 through 46-15), the weeks at issue.

(2) During week 29-15, claimant made contact with three employers to inquire about job openings or to apply for job openings.

(3) During week 32-15, claimant made contact with an employer on August 10, 2015 to inquire about a job opening or to apply for a job opening. He also reviewed a job placement website. On August 11, 2015, claimant made contact with another employer to inquire about a job opening or apply for a job opening. He also reviewed another job placement website. On August 12, 2015, claimant hand-delivered copies of his resume to other employers.

(4) During week 33-15, claimant made contact with two employers on August 17, 2015 to inquire about job openings or to apply for job openings. Also on August 17, he reviewed two job placement websites and hand-delivered copies of his resume to other employers.

(5) During week 34-15, claimant made contact with one employer to inquire about a job opening or to apply for a job opening.

(6) During weeks 35-15 through 46-15, claimant made contact with one employer per week to inquire about a job opening or to apply for a job opening. He also reviewed two job placement websites per week.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work during weeks 29-15 and 34-15 through 46-15, and therefore is ineligible for benefits for those weeks. However, we disagree with the ALJ and conclude that claimant actively sought work during weeks 32-15 and 33-15, and therefore is eligible for benefits for those weeks.

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). 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.* Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5)(a)(A). "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). Where, as here, the Department initially paid a claimant benefits, the Department has the burden to establish by a preponderance of evidence that claimant is not eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In Hearing Decision 16-UI-51578, the ALJ found that none of claimant's weekly online claims listed at least five different work seeking activities that included at least two direct contacts with different employer.¹ We agree with the ALJ with respect to weeks 29-15 and 34-15 through 46-15. However, claimant's weekly online claims for weeks 32-15 and 33-15 listed two direct contacts with different employers, two reviews of different job placement websites, and the submission of his resume to other employers, for each week. *See* Exhibit 1 at 6-7. Absent a preponderance of evidence to the contrary, the Department failed to establish that claimant did not conduct five work seeking activities per week during weeks 32-15 and 33-15, as required under OAR 471-030-0036(5)(a).

We therefore conclude that claimant did not actively seek work during weeks 29-15 and 34-15 through 46-15, and therefore is ineligible for benefits for those weeks. However, we conclude that claimant actively sought work during weeks 32-15 and 33-15, and therefore is eligible for benefits for those weeks.

DECISION: Hearing Decision 16-UI-51578 is modified, as outlined above.

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

¹ Hearing Decision 16-UI-51578 at 2.

DATE of Service: March 2, 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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