

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0381

Reversed
Eligible Weeks 40-15 to 41-15 and 50-15 to 5-16

PROCEDURAL HISTORY: On February 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 125654) concluding claimant failed to actively seek work from October 4, 2015 to October 17, 2015 (weeks 40-15 to 41-15) and December 13, 2015 to February 6, 2016 (weeks 50-15 to 5-16). Claimant filed a timely request for hearing. On March 22, 2016, ALJ S. Lee conducted a hearing, and on March 28, 2016 issued Hearing Decision 16-UI-55943, affirming the Department's decision. On April 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) On October 1, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant filed weekly claims for benefits for the weeks of October 4, 2015 to October 17, 2015 (weeks 40-15 to 41-15) and December 13, 2015 to February 6, 2016 (weeks 50-15 to 5-16), the weeks at issue. The Department paid claimant or gave her waiting week credit for all the weeks at issue.

(2) During the week of October 4, 2015 to October 10, 2015 (week 40-15), claimant had direct contact with five employers by applying for two data entry clerk positions, a cashier position, a position at DHS and a customer service position and interviewing for a production warehouse position. Claimant conducted work seeking activities at least one day that week by contacting her job coach. Claimant also applied for a production position in Tualatin that she was not willing to accept.

(3) During the week of October 11, 2015 to October 17, 2015 (week 41-15), claimant had direct contact with three employers by applying for a DHS position, a position in Multnomah County and a human services support position. Claimant conducted work seeking activities two days by contacting her job coach.

(4) During the week of December 13, 2015 to December 19, 2015 (week 50-15), claimant had direct contact with four employers by applying for a warehouse shipping and receiving job, an administrative

assistant position, a package handler position and by checking with Manpower, a temporary agency, for work. Claimant conducted work seeking activities on two days by working with her job coach to look for jobs and rewrite her cover letter for administrative positions.

(5) During the week of December 20, 2015 to December 26, 2015 (week 51-15), claimant had direct contact with five employers by applying for an office assistant job, an office clerk assistant and a shipping and receiving clerk position, applying with Employment Overload, a temporary agency, and interviewing for an office assistant position. Claimant conducted work seeking activities on two days by meeting with her job coach and rewriting her cover letter for a shipping clerk position.

(6) During the week of December 27, 2015 to January 2, 2016 (week 52-15), claimant had direct contact with four or five employers by applying for a hotel reception position, a cashier position, a data entry job and an admin/data entry clerk job, and by interviewing for a reception job. Claimant also conducted work seeking activities with her job coach.

(7) During the week of January 3, 2016 to January 9, 2016 (week 1-16), claimant had direct contact with five employers by applying for jobs as a cashier, customer service/cashier, customer service/office assistant and production worker, and contacting a temporary agency looking for jobs. Claimant conducted work seeking activities on at least one day by meeting with her job coach to search for jobs and rewrite her cover letter.

(8) During the week of January 10, 2016 to January 16, 2016 (week 2-16), claimant had direct contact with four employers by applying for jobs as an office worker, production worker, assembly worker and production sales specialist. Claimant conducted work seeking activities on two days by contacting a case worker for an appointment for help seeking jobs and by rewriting her cover letter for a sales specialist position.

(9) During the week of January 17, 2016 to January 23, 2016 (week 3-16), claimant had direct contact with at least four employers by applying for assembly jobs, a billing specialist job and an office position and meeting with Employer's Overload to submit a new resume. Claimant conducted work seeking activities on three days by contacting temporary agencies, rewriting her resume and cover letter for a billing specialist position and meeting with her job coach.

(10) During the week of January 24, 2016 to January 30, 2016 (week 4-16), claimant had direct contact with five employers by applying for a shipping and receiving clerk job, a retail clerk specialist job, an administrative assistant job and a receiving clerk position, and by meeting with Express Employment to complete an application for temporary work. Claimant conducted work seeking activities on at least one day by contacting temporary agencies and meeting with her job coaches.

(11) During the week of January 31, 2016 to February 6, 2016 (week 5-16), claimant had direct contact with three employers by applying for a production job, a program assistant and an industries package position. Claimant conducted work seeking activities on two days by rewriting her cover letter for a program assistant job and interviewing for an administrative assistant job.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant actively sought work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. 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, including conducting at least five work seeking activities per week, two of which must be direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (February 23, 2014). Work seeking activities include such things as participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement websites without responding to posted job openings, and making direct contact with an employer. OAR 471-030-0036(5)(a)(A). Direct contact with an employer means making contact in person, by phone, mail or electronically to inquire about a job opening or apply for jobs. OAR 471-030-0036(5)(a)(B).

In Hearing Decision 16-UI-55943, the ALJ concluded that claimant did not actively seek work during any of the weeks at issue. We disagree.¹ The ALJ reasoned that claimant "was counting activities that should only be one as multiple contacts/activities," when applying for jobs and fulfilling the application requirements associated with them, such as skills tests, but the application and skills test should count only as one activity. Hearing Decision 16-UI-55943 at 3-4. Although claimant's work search records, as set forth in Exhibit 1, refers both to claimant's application with an employer and her subsequent fulfillment of related application requirements, which may or may not be appropriate, exclusion of duplicate activities does not render claimant's work seeking activities insufficient to meet the five activities required of her. Therefore, it is immaterial that claimant listed skills tests in her records.

The ALJ concluded that claimant was "improperly counting contacts with temporary staffing agencies as new contacts each week," but after the first week each contact "would not count as a new employer contact, but rather would be similar to following up with previous contacts. Hearing Decision 16-UI-55943 at 4. We disagree. There is nothing in the Department's rules that requires us to exclude a subsequent contact with a temporary agency from the definition of a "direct contact." Moreover, temporary agencies often require employees to maintain regular contact with them as a condition of being eligible for job placement, making repeated, even weekly, contact with a temporary agency the type of work seeking activity that is calculated at "return[ing] to work at the earliest opportunity," and, therefore, properly considered as part of claimant's work seeking activities.

The ALJ also concluded that claimant "listed updating her resume and cover letter nearly every week," but "[w]hile such activities can be considered one of the claimant's activities on an occasional basis, such revisions should not be needed or count week after week." Hearing Decision 16-UI-55943 at 4. Again, we disagree. OAR 471-030-0036(5)(a)(A) specifically states that "updating a resume" is considered a "work seeking activity," and there is nothing in the Department's definition of "work seeking activities" that excludes or sets limits on how many times an individual may update her resume or cover letter and have that activity count toward the Department's requirement that an individual perform five work seeking activities each week. An individual who desires to return to work at the

¹ The ALJ concluded that claimant should not have counted her application to a job located in Tualatin since she was unwilling to work there. We agree with the ALJ that claimant's application for work she was unwilling to accept cannot be considered as part of her work search activities, and, accordingly, we have disregarded that application when counting claimant's work search activities during week 40-15.

earliest opportunity would spend time on at least a weekly basis to update or customize her resume or cover letter to suit the specific jobs she is seeking.

The ALJ also cited to EAB decisions 00-AB-0732 (issued April 25, 2000) and 07-AB-0540 (issued March 27, 2007) as support for the position that claimant did not actively seek work, because those decisions set a standard that "an ordinary and reasonable person would make at least three new employer contacts a week" and "would have contacted new potential employers every week, rather than restrict their work search to the same few employers each week." Hearing Decision 16-UI-55943 at 4. As a preliminary matter, those cases both predate the Department's most recent amendment of OAR 471-030-0036, which is the Department's interpretation of what it means to "actively seek work" under ORS 657.155(1)(c). Therefore, the decisions the ALJ cited are not controlling. Furthermore, this record shows that claimant both made three or more employer contacts during each of the weeks at issue *and* did so with new potential employers every week, so even if we applied the standards set forth in those decisions to this case, claimant would still have met them.

Finally, the ALJ cited to the "lack of detailed information" in claimant's work search records as reason to doubt whether the "each of the listed activities was for a new position or an additional contact for the same position" and conclude that claimant did not actively seek work. Hearing Decision 16-UI-55943 at 4. The ALJ's concern, as stated, is inconsistent with the ALJ's earlier finding that claimant's records were sufficiently detailed to show that she was listing both an application for a position and related application requirements as separate job seeking activities. We agree with the ALJ that claimant did not, for example, list the employers' names, actual job titles or job listing numbers on her work search records, but, notably, there is nothing in the applicable law or rules that requires claimant do so. We agree with the ALJ that claimant was sincere, both in her testimony and in the records she provided as evidence of her work search. Although claimant could, and probably should have maintained far more detailed records of her work search activities, absent a basis for concluding that she was not a credible witness, we have no reason to disbelieve that claimant performed the work search activities she reported.

The preponderance of the evidence in this record establishes that claimant performed at least five work seeking activities during each of the weeks at issue, including at least two direct contacts with employers who might hire her, thereby satisfying the Department's definition of an "active work search." In fact, her records indicate that she often performed several more activities than the Department required of her. We therefore conclude that claimant is eligible for benefits based on her work search activities during the weeks at issue, October 4, 2015 to October 17, 2015 (weeks 40-15 to 41-15) and December 13, 2015 to February 6, 2016 (weeks 50-15 to 5-16).

DECISION: Hearing Decision 16-UI-55943 is set aside, as outlined above.²

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

DATE of Service: April 28, 2016

² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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