

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0645

Reversed & Remanded

PROCEDURAL HISTORY: On April 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of March 20, 2016 through April 9, 2016 (decision # 125545). Claimant filed a timely request for hearing. On May 16, 2016, ALJ Shoemake conducted a hearing, and on May 23, 2016 issued Hearing Decision 16-UI-60174, affirming the Department's decision. On May 31, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-60174 is reversed and this matter is remanded for further development of the record.

This case involves whether claimant actively sought work during the period of March 20, 2016 through April 9, 2016 (weeks 12-15 through 24-15) and was eligible to receive unemployment insurance benefits during those weeks. 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). 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 exceptions, 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). If an individual is on a temporary layoff of four weeks or less with the individual's regular employer, an individual is considered to be 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 week in which the temporary layoff occurred. OAR 471-030-0036(5)(b)(A). An individual is considered to be on a temporary layoff if, as of the date of the layoff, the individual was given a date to return to full time work of four weeks or less from the date of the layoff. *Id.*

In Hearing Decision 16-UI-60174, the ALJ determined claimant did not actively seek work during the weeks at issue. She first reasoned that, since claimant was told on March 19, 2016 that he was going to return to full-time work on April 18, 2016, which was 31 days after March 19, 2016, he was not entitled to take advantage of the more lenient job seeking requirements for a temporary layoff under OAR 471-030-0036(5)(b)(A). Hearing Decision 16-UI-60174 at 3; Audio at ~14:40. However, the regulation states that claimant was required to return to work within four weeks (or presumably 28 days) or less after *the date of the layoff* for his time away from work to qualify as a temporary layoff. See OAR 471-030-0036(5)(b)(A) (emphasis added). While the ALJ asked claimant when he learned of his layoff and when he was told he was going to return to work, she did not ask claimant when his layoff began. Without this information, it is impossible to determine if April 18, 2016 was equal to or less than four weeks from the effective date of the layoff, or the first day he missed work due to the layoff. The ALJ should inquire about this matter to enable us to determine the applicability of the temporary layoff work search requirements to this case. The ALJ should also inquire specifically about whether claimant remained in contact with his regular employer during each of the weeks at issue.

In Hearing Decision 16-UI-60174, the ALJ also concluded claimant did not meet the minimum work seeking requirements during any of the weeks at issue by performing five work seeking activities of which two needed to be direct employer contacts. Hearing Decision 16-UI-60174 at 3. In the event the more lenient work search requirements set out at OAR 471-030-0038(5)(b)(A) were not applicable to claimant, the ALJ should inquire more closely about claimant's work seeking activities during the weeks at issue other than those he detailed at the hearing. From the direct employer contacts claimant listed at hearing, it appears that he contacted at least two employers directly each week. However, it was not clear whether the employers he mentioned might have hired him, what job he was interested in, or whether he submitted applications or resumes for particular jobs that those employers had available for hire. It also was not clear whether claimant contacted directly employers other than those he listed in his hearing testimony. The ALJ should make further inquiry about all of claimant's direct contacts with employers week by week for each of the weeks at issue.

The ALJ also should inquire week by week for each of the weeks at issue about claimant's work seeking activities that did not involve direct contacts with employers. At hearing, claimant stated that he modified his resume often during the weeks at issue to highlight certain aspects of it that applied to particular the jobs in which he was interested, but the ALJ did not ask him to estimate how many times he did in each of the weeks at issue. Audio at ~21:08. While claimant stated he looked at Craigslist for job openings, the ALJ should have, but did not follow up to learn for which of the weeks at issue he did so, since that would be a non-employer work seeking activity. Audio at ~21:49. The ALJ should also have made inquiry of claimant about how he found out about the job openings for which he applied other than through Craigslist, what other, if any, publications or websites he looked at to learn about available jobs. The ALJ must ask for a week by week accounting of the sources he consulted for job openings. It was also mentioned during the hearing that claimant listed one trip to a WorkSource Center to sign up for iMatchSkills© as a work seeking activity, but the ALJ did not follow up to determine whether claimant registered for other job placement services, attended classes or participated in other job placement meetings, seminars or conferences, or groups, including networking groups or clubs dedicated to job placements. Absent a week by week inquiry into claimant's direct employer contacts and other job seeking activities, it cannot be determined whether claimant engaged in five work seeking activities during each of the weeks at issue.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to 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). Because the ALJ failed to develop the record necessary for a determination of whether claimant actively sought work during each of the weeks at issue, Hearing Decision 16-UI-60174 is reversed, and this matter remanded for further development of the record.

DECISION: Hearing Decision 16-UI-60174 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 8, 2016

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-60174 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

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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