

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0660**

*Affirmed*  
*Ineligible Weeks 5-16 and 6-16*

**PROCEDURAL HISTORY:** On March 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 82256) concluding that claimant did not actively seek work from January 31 through February 20, 2016 (weeks 5-16 through 7-16). Claimant filed a timely request for hearing. On April 6, 2016, the Office of Administrative Hearings issued notice of a hearing scheduled for April 20, 2016. On April 20, 2016, ALJ S. Lee issued Hearing Decision 16-UI-57748, dismissing claimant's request for a hearing for failure to appear at the hearing. Claimant filed a timely request to reopen the hearing. On May 20, 2016, ALJ S. Lee conducted a hearing and on May 24, 2016, issued Hearing Decision 16-UI-60304, granting claimant's request to reopen and concluding that claimant did not actively seek work from January 31, through February 13, 2016 (weeks 5-16 and 6-16). On May 31, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of Hearing Decision 16-UI-60304 granting claimant's request to reopen. We therefore confined our review to the issue of whether claimant actively sought work during the weeks at issue.

Claimant failed to certify that he provided a copy of his arguments to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The arguments also 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 as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Sometime before January 31, 2016, claimant stopped working full time as an electrical technician for Point Monitor Corporation.

(2) On January 31, 2016, claimant filed an initial claim for unemployment benefits online. His weekly benefit amount was established as \$567. Before the Department's online claim system allowed claimant to complete his filing, he was required to confirm an advisory that told him that if he had been laid off

by his employer, and did not have a definite date by which he was scheduled to return to work, he was required to stay in touch with his employer and immediately begin an active work search. The advisory explained that an active work required that he complete five work seeking activities during each week for which benefits were claimed; at least two of these activities had to be direct employer contacts. Claimant claimed benefits for weeks 5-16 and 6-16, the weeks at issue. The Department paid claimant benefits for week 6-16.<sup>1</sup>

(3) During the weeks at issue, claimant regularly contacted Point Monitor Corporation about available work, but performed no other work seeking activities.

**CONCLUSION AND REASONS:** Claimant did not actively seek work during weeks 5-16 and 6-16 and is ineligible to receive 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). An exception to the general requirement of "actively seeking work" exists if an individual was laid off and, as of the date of the layoff, given a return to work date of four weeks or less from the date of the layoff. OAR 471-030-0036(5)(b)A)-(B). For such individuals, the individual is considered to have actively sought work if he remains in contact with his employer and is capable of accepting and reporting for any suitable work with the employer during the first four weeks after the layoff. OAR 471-030-0036(5)(b)(A). This exception does not apply if, at the time the individual was laid off, he was not given a definite date on which he was expected to return to work; under those circumstances, the individual must immediately begin a weekly work search consistent with the general work seeking requirements of OAR 471-030-0036(5)(a).

At the hearing, claimant agreed that the employer did not give him a definite date by which he was expected to return to work. Claimant asserted that he failed to seek work during the weeks at issue because a Department representative advised him he did not have to conduct a work search. Claimant testified that sometime after week 5-16 (January 31 through February 6, 2016), he visited a Department office and spoke to a Department representative. Claimant asserted that he asked the representative if he was required to conduct a work search, and the representative told him that it was not necessary, so long as claimant remained in contact with his employer. Audio recording at 21:05. Claimant appears to be asserting that the doctrine of estoppel applies to preclude the Department from enforcing the general work seeking requirements of OAR 471-030-0036(5) against him based on the alleged statements of one of its representatives. Estoppel against a government entity requires a finding that an agency or its representative knowingly made a false or misleading statement of an existing material fact to an individual, and the individual justifiably relied on the false or misleading statement to the individual's detriment. *Employment Division v. Western Graphics Corporation*, 76 Or App 608, 710 P2d 788

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<sup>1</sup> Week 5-16 was credited to claimant as his waiting week under ORS 657.155(1)(d).

(1985). Here, the record does not establish that claimant's mistaken conclusion – that he was not required to conduct a work search – was attributable to the Department. Claimant could not remember the date on which he spoke to the Department representative, and could not provide the name of the representative. The Department witness who testified at the hearing explained that Department employees make notes regarding all conversations with a claimant, and also testified that Department records contained no notes of any conversations with claimant during the weeks at issue. In addition, claimant testified that he believed he had complied with benefit eligibility requirements because he remained in contact with his employer. Audio Recording at 32:03. Based on these circumstances, we conclude that claimant's failure to actively seek work during the weeks at issue resulted from his misunderstanding of the eligibility requirements and not from reliance on false or misleading advice from a Department representative.

Claimant failed to actively seek work during weeks 5-16 and 6-16. He is not eligible for waiting week credit or benefits for this period.

**DECISION:** Hearing Decision 16-UI-60304 is affirmed.

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

**DATE of Service:** July 6, 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](http://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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