

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0773

Affirmed
Ineligible Weeks 16-16 through 21-16

PROCEDURAL HISTORY: On May 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from April 17 through April 23, 2016 (decision # 72110). Claimant filed a timely request for hearing. On June 20, 2016, ALJ Shoemake conducted a hearing, and on June 23, 2016 issued Hearing Decision 16-UI-62378, concluding claimant did not actively seek work from April 17 through May 28, 2016. On June 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted new information to EAB that was not part of the hearing record. Claimant provided no explanation to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On March 30, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) On April 19, 2016, claimant's regular employer, PCC Structurals, told claimant it was temporarily reducing her hours. The employer did not give claimant a date that she would return to full time work.

(3) Claimant's last day of work before she restarted her claim was April 19, 2016. Claimant claimed benefits each week from April 17 through May 28, 2016 (weeks 16-16 through 21-16), the weeks at issue, to supplement her income while she worked reduced hours for the employer. The Department informed claimant she was required to conduct five work-seeking activities each week. The Department initially paid, then subsequently denied, weeks 16-16 through 20-16; the Department denied week 21-16.¹

¹ EAB takes notice of this fact, which is contained in Employment Department records. Any party that objects to EAB doing so must submit such objection to EAB in writing, setting forth the basis of the objection in writing, within ten days of EAB mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) During all the weeks at issue, claimant worked 10 to 12 hours for her regular employer as a weld mapper, and checked her email for weld mapper job announcements from other potential employers.

(5) During week 17-16, claimant met with a representative at a WorkSource office regarding her work search. Sometime during weeks 17-16 through 21-16, claimant sought work at two Fred Meyer stores, two Safeway stores, and a Costco store. Claimant did not keep records of the dates when she sought work at the grocery and retail stores, and she did not report that information to the Department when she claimed benefits.

(6) During weeks 18-16 and 19-16, claimant sought weld mapper work in two different departments at Precision Castparts.

(7) When claimant returned to work after week 21-16, she worked 30 to 35 hours per week, and not full time.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that claimant did not actively seek work during weeks 16-16 through 21-16.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). “Actively seeking work” generally means doing what an ordinary and reasonable person would do to return to work at the earliest opportunity, specifically, doing five work-seeking activities per week, including at least two being direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (February 23, 2014). Individuals who are “on temporary layoff of four weeks or less with the individual’s regular employer” may be exempt from seeking work with other employers for a four-week period, but only if “the individual had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual’s weekly benefit amount,” in which case the individual is considered to have actively sought work merely by remaining in contact with the employer, and being capable of accepting and reporting for suitable work opportunities. *See* OAR 471-030-0036(5)(b). An individual who filed an initial claim for benefits and works less than full time for his employer during the first week of his initial claim may count each day worked for the employer as a direct employer contact. OAR 471-030-0036(5)(e)(A).

When the Department initially paid an individual benefits for a week at issue, it has the burden to establish by a preponderance of evidence that the individual is not eligible for benefits for that week. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). When the Department initially denied benefits, the burden is on the individual claiming benefits. *Id.* Thus, here, the Department has the burden of proof for weeks 16-16 through 20-16, and claimant for week 21-16.

Claimant was not on a temporary layoff of four weeks or less because she was never laid off work, worked 10 to 12 hours per week during the weeks at issue, and was not given a date to return to full time work when the reduction in her work hours occurred. Thus, the Department correctly informed claimant that she was required to conduct five work-seeking activities per week, including two direct contacts with employers who might hire her. We infer that claimant worked on Monday and Tuesday, April 18 and 19, 2016, before she restarted her claim during week 16-16. Therefore, pursuant to OAR 471-030-

0036(5)(e)(A), which provides that individuals working reduced hours during the first week claimed may count each day worked as a direct employer contact, claimant had two direct employer contacts during week 16-16. Claimant had one other work-seeking activity that week when she checked her email for weld mapper job announcements. However, claimant testified at hearing that she had no other work-seeking activities during week 16-16. Audio Record at 26:22 to 26:27. Claimant is, therefore, not eligible for benefits or waiting week credit for week 16-16 because she did not conduct five work-seeking activities that week.

Claimant asserted at hearing that she engaged in five work-seeking activities per week for each week of 17-16 through 21-16. Audio Record at 24:55 to 25:11. However, although claimant sought work from grocery and retail employers in addition to making direct contact with her regular employer and conducting email job searches, claimant was unable to provide information, such as dates, to support a finding that she conducted five work-seeking activities during any of weeks 17-16 through 21-16. Audio Record 26:45 to 30:39; 33:17 to 33:41. Claimant alleged several work-seeking activities for week 19-16, but without dates or other information about those alleged activities, the record fails to show when she engaged in the activities or that they all occurred during week 19-16. Audio Record at 34:42 to 34:50. Without reliable evidence of when claimant engaged in those activities, and absent a basis to conclude that the Department's witness was not credible, the Department's evidence that claimant did not list any grocery or retail employers in her work-seeking activities when she claimed benefits online outweighs claimant's evidence that those activities resulted in five work-seeking activities during any of the weeks at issue.

In sum, we conclude that claimant is ineligible for benefits during weeks 16-16 through 21-16.

DECISION: Hearing Decision 16-UI-62378 is affirmed.

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

DATE of Service: August 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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