

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0812-R

Request for Reconsideration Granted
Appeals Board Decisions 2016-EAB-0812 and 2016-EAB-0813 Adhered to on Reconsideration

PROCEDURAL HISTORY: On April 25, 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 135414 concluded that claimant did not actively search for work from November 22 through December 5, 2015 (weeks 47-15 and 48-15) and decision # 140328 concluded that claimant did not actively search for work from January 17 through February 13, 2016 (weeks 3-16 through 6-16). Claimant filed timely requests for hearing. On June 16, 2016, ALJ Shoemake conducted a consolidated hearing, and on issued Hearing Decision 16-UI-62496, which concluded claimant had not actively searched for work during weeks 3-16 through 6-16, and Hearing Decision 16-UI-62497, which concluded that claimant did not actively search for work during weeks 47-15 and 48-15. On June 24, 2016, claimant filed applications for review with the Employment Appeals Board (EAB). On July 14, 2016, EAB issued Appeals Board Decisions 2016-EAB-0812 and 2016-EAB-0813, which affirmed Hearing Decisions 16-UI-62496 and 16-UI-62497.

On July 28, 2016, claimant filed a “letter of consideration” regarding EAB Decisions 2016-EAB-0812 and 2016-EAB-0813. Under the authority granted to us by ORS 275.290(3), we will reconsider these two appeals board decisions to address issues raised by claimant.

Claimant’s July 28 letter contained information that was not part of the hearing record – the name of a Department representative with whom he allegedly spoke and who assured him that he had properly filed his unemployment claims. Claimant’s letter contained no reason why he did not offer this information at the June 16 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of the EAB decisions at issue. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0812-R and 2016-EAB-0813-R).

CONCLUSION AND REASONS: Reconsideration is granted. We adhere to EAB Decisions 2016-EAB-0812 and 2016-EAB-0813.

In EAB Decisions 2016-EAB-0812 and 2016-EAB-0813, we affirmed the ALJ's conclusion that claimant failed to actively search for work from November 22 through December 5, 2015 (weeks 47-14 and 48-15) and from January 17 through February 13, 2016 (weeks 3-16 through 6-16), the weeks at issue. The ALJ's conclusion was based on a finding that during the weeks at issue, claimant performed no work search activities. We agreed with the ALJ's finding that because claimant had not been temporarily laid off by his regular employer with a definite return to work date within four weeks of the date of layoff, he was required to conduct five work seeking activities under OAR 471-030-003(5)(a) and (b) (February 23, 2014) during the weeks at issue.

In his July 28 letter, claimant asserted that "I did look for employment at 4 weeks, I believe all this confusion stems back to writing down the wrong dates." The ALJ's determination that claimant was not on a temporary layoff status during the weeks at issue was based not on an error claimant made in claiming his benefits, as claimant suggests. Instead, the ALJ concluded (and we agreed) that claimant was not on temporary layoff status during the weeks at issue because his employer did not give him a definite return to work date that was within four weeks of the date on which he was laid off. In his July 28 letter, claimant admits that the return to work dates his regular employer gave him were uncertain: "[t]he jobs don't always start on the exact date as expected. The boss may give me a start up date, yet it may take a little longer, getting permits, weather, relocate, etc."

Also in his July 28 letter, claimant referred to the contention he made at his hearing – that he spoke with a Department representative who told him that he had properly filed his claims. Audio recording at 16:59. Claimant appears to be invoking the doctrine of estoppel, contending that based on the statements of a Department representative, the Department was precluded from finding his work search inadequate. Estoppel against a government entity requires finding that an agency or its representative made a false or misleading statement about an existing material fact to an individual and the individual justifiably relied on that inaccurate statement to his detriment. *Employment Division v. Western Graphics Corporation*, 76 Or App 608, 710 P2d 788 (1985). While claimant could not remember the specific date he spoke with the Department representative, he testified that he spoke with this person *after* he had claimed benefits for four weeks. Audio recording at 16:59. Claimant therefore did not rely to his detriment on any inaccurate advice the representative gave him when he filed claims during the weeks at issue in which he indicated he was on temporary layoff. The alleged statement made by a Department representative does not meet the threshold needed to give rise to a claim of estoppel against the Department.

In conclusion, we find no error of fact or law in EAB Decisions 2016-EAB-0812 and 2016-EAB-0813 that would require correction on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision "to the extent necessary and appropriate for the correction of a previous error of fact or law.")

DECISION: Reconsideration is granted. EAB Decisions 2016-EAB-0812 and 2016-EAB-0813 are adhered to on reconsideration.

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

DATE of Service: August 3, 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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