

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1204

Modified
Ineligible Week 25-16
Eligible Weeks 26-16 through 27-16

PROCEDURAL HISTORY: On September 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 74003) concluding claimant did not actively seek during the weeks of June 19 through July 9, 2016 (weeks 25-16 through 27-16). Claimant filed a timely request for hearing. On October 6, 2016, ALJ Vincent conducted a hearing, and on October 12, 2016 issued Hearing Decision 16-UI-69087, modifying the Department's decision and concluding claimant did not actively seek work during the weeks from June 19 through July 2, 2016 (weeks 25-16 through 26-16), but did actively seek work during the week of July 3 through July 9, 2016 (week 27-16). On October 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party appealed the portion of Hearing Decision Hearing Decision 16-UI-69087 concluding claimant actively sought work during week 27-16. EAB therefore limited its review to whether claimant actively sought work during weeks 25-16 through 26-16.

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits on April 28, 2016. Claimant claimed benefits for weeks 25-16 through 26-16, the weeks at issue. The Department paid claimant unemployment insurance benefits for the weeks at issue.

(2) Claimant attended a Department reemployment eligibility assessment (REA) on May 4, 2016 and June 13, 2016, before she claimed weeks 25-16 and 26-16. Claimant was advised at the REAs that she was required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer.

(3) During week 25-16, claimant attended Department workshop classes Monday through Friday and applied for work as a deli worker with Roth's IGA. Claimant also conducted an online job search.

(4) During week 26-16, claimant attended Department workshop classes Monday through Friday and applied for work as a caregiver at one Sweet Bye N Bye location, and completed a separate application for an activities leader at a separate Sweet Bye N Bye location. Claimant also conducted an online job search.

CONCLUSION AND REASONS: Claimant did not actively seek work during week 25-16, but did actively seek work during week 26-16.

To be eligible to receive benefits, unemployed individuals must 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 few exceptions, none of which apply here, 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).

At hearing, the Department met its burden to show that claimant made no more than one direct employer contact during week 25-16 after the Department advised her at the REA meetings that two of her five work search activities each week she claimed had to be direct employer contacts. Claimant’s failure to keep records of her job contacts during that week left her unable to establish her allegation that she made multiple direct employer contacts during that week. Thus, we agree with the ALJ’s conclusion that claimant did not actively seek work and was not eligible for benefits during week 25-16. Hearing Decision 16-UI-69087 at 2.

However, we disagree with the ALJ that claimant did not actively seek work during week 26-16. Hearing Decision 16-UI-69087 at 2. The ALJ found as fact that claimant “made a direct employer contact with employer Sweet Bye [N] Bye for a caregiver position.” Hearing Decision 16-UI-69087 at 2. However, claimant testified at hearing that she completed applications at two separate Sweet Bye N Bye locations. One was for a caregiver position, and the other was for an activities leader. Audio Record at 18:57 to 19:36, 23:25 to 24:06. Claimant thus made two direct employer contacts to Sweet Bye N Bye. Consequently, because claimant also engaged in at least three other job search activities by attending Department workshops that week, claimant actively sought work during week 26-16.

DECISION: Hearing Decision 16-UI-69087 is modified, as outlined above.

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

DATE of Service: November 7, 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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