

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1394

Reversed
Eligible

PROCEDURAL HISTORY: On November 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from October 9, 2016 through October 22, 2016 (decision # 95756). Claimant filed a timely request for hearing. On December 8, 2016, ALJ A. Mann conducted a hearing and issued Hearing Decision 16-UI-72554, affirming the Department's decision. On December 13, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the record.

FINDINGS OF FACT: (1) Claimant filed weekly claims for benefits for the weeks of October 9, 2016 to October 22, 2016, which are the weeks at issue. The Department paid him benefits both weeks.

(2) Claimant had worked for Signs Etc., Inc. in approximately 2014. In September 2016, Signs Etc., Inc.'s general manager told claimant that he would hire claimant as soon as some jobs came in. Between October 9, 2016 and October 22, 2016, claimant contacted the general manager for Signs Etc., Inc. on a daily basis. Claimant knew he had that job and did not "strongly" seek work elsewhere. Audio recording at ~ 15:45. He did, however, make contact with other employers seeking work by calling or visiting "at least seven or eight" new employers each week. Audio recording at ~ 16:30.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant actively sought work during the weeks at issue.

ORS 657.155(1)(c) provides that individuals must actively seek work every week as a condition of being eligible for benefits. OAR 471-030-0036(5)(a) (February 23, 2014) provides that an individual is "actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity," which is conducting "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." The Department paid claimant benefits for both of the weeks at issue, and therefore has the burden of

proving that benefits should not have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The ALJ concluded that claimant did not actively seek work from October 9, 2016 to October 22, 2016 because he “was 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,” but instead only remained in daily contact with” Signs Etc., Inc. Hearing Decision 16-UI-72554 at 3. Claimant testified, however, that he actually had direct contact with “at least seven or eight” new employers each week, and there is no evidence on this record suggesting otherwise. Each of claimant’s contacts was a “work seeking activity” for purposes of the above-cited rule. Because the record shows that claimant conducted “at least seven or eight” “work seeking activities” during each of the weeks at issue, and the Department did not prove that benefits should not have been paid, we conclude that claimant did actively seek work as required and was eligible for the benefits he received between October 9, 2016 and October 22, 2016.

DECISION: Hearing Decision 16-UI-72554 is set aside, as outlined above.

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

DATE of Service: January 12, 2017

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.