

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0345

Affirmed
Ineligible – Weeks 47-16 through 52-16

PROCEDURAL HISTORY: On January 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks including November 20 through December 31, 2016 (weeks 47-16 through 52-16) (decision # 131546). Claimant filed a timely request for hearing. On March 10, 2017, ALJ Monroe conducted a hearing, and on March 17, 2017, issued Hearing Decision 17-UI-79166, affirming the Department's decision. On March 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: At the March 10, 2017 hearing, the ALJ marked and admitted documents submitted by claimant as Exhibit 1. Audio Record ~ 3:35 to 6:20. In the hearing decision, however, the ALJ stated that no exhibits were offered or admitted into evidence. Hearing Decision 17-UI-79166 at 1. The ALJ's failure to state in the hearing decision that the documents claimant submitted were admitted into the record as Exhibit 1, and considered, appears to be a mere oversight. Pursuant to ORS 657.275(2), EAB performed a *de novo* of the entire hearing record, including Exhibit 1.

FINDINGS OF FACT: (1) On November 17, 2016, claimant was laid off from work with his regular employer, Rocky Mountain Construction (RMC), due to winter weather conditions. At the time of the layoff, claimant was not given a return to work date but was told he would be placed on the employer's on call list.

(2) Claimant filed an initial claim for unemployment benefits on November 28, 2016. When claimant filed his initial claim, the Department sent to claimant by email, at the email address he specified, a work search advisory that advised claimant that to be eligible for benefits, he was required to complete at least five work-seeking activities for each week he claimed benefits. He was advised that work seeking activities included, but were not limited to attending job placement meetings, updating a resume, or searching job placement websites and newspaper listings. He was further advised that two of the five work seeking activities completed each week were required to be direct contacts with an employer who might hire someone with his skills or experience. Audio Record ~ 12:00 to 15:30. Claimant received the work search advisory.

(3) Claimant claimed and received benefits for each of the weeks including November 20 through December 31, 2016 (weeks 47-16 through 52-16). These are the weeks at issue. When filing each of his weekly claims for weeks 47-16 through 52-16, claimant reported to the Department that he was on a temporary layoff and did not report any work seeking activities.

(4) On or about January 18, 2017, a Department investigator contacted claimant by mail about his benefit claims for the weeks at issue and requested that he provide work search information for each of the weeks at issue. Claimant responded with work search information later that week.

(5) During week 47-16, claimant engaged in one direct employer contact, and three other work seeking activities. During week 48-16, claimant engaged in one direct employer contact, and three other work seeking activities. During week 49-16, claimant engaged in no direct employer contacts, but three work seeking activities. During week 50-16, claimant engaged in one direct employer contact, and three other work seeking activities. During week 51-16, claimant engaged in no direct employer contacts, but three work seeking activities. During week 52-16, claimant engaged in one direct employer contact, and three work seeking activities.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant did not actively seek work and is ineligible for benefits during the weeks at issue.

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). 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). OAR 471-030-0036(5) states that the minimum requirements for an individual to be considered “actively seeking work” are five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual. Examples of work seeking activities include, but are not limited to registering for job placement services with the Department, attending job placement meetings sponsored by the Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5)(a). OAR 471-030-0036(5)(b) provides, in pertinent part:

(b) For an individual on temporary layoff of four weeks or less with the individual’s regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to work, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. After four calendar weeks have passed following the week in which the temporary layoff occurred, the individual must seek work with other employers in addition to the individual’s regular employer.

Where, as here, the Department pays a claimant benefits or gives him waiting week credit for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department met its burden. The Department established, and claimant did not dispute, that claimant was not put on a temporary layoff of four weeks or less and that his regular employer had not given him a date on which he would return to work when it laid him off on November 17, 2016. Accordingly, under OAR 471-030-0036(5), claimant was required to perform a minimum of five work seeking activities per week, with at least two of those being direct contact with an employer who might hire him. Claimant also admitted that he probably received and read the Department's work search advisories but did not conduct work searches in accordance with those requirements during the weeks at issue because he believed he was excused from doing so while on a temporary layoff and did not fully understand the work search advisories at the time. Audio Record ~ 42:00 to 44:00. Nevertheless, because he did not conduct the required work searches, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for the weeks including November 20 through December 31, 2016 (weeks 47-16 through 52-16).

DECISION: Hearing Decision 17-UI-79166 is affirmed.

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

DATE of Service: April 10, 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.

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