

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0352

Reversed & Remanded

PROCEDURAL HISTORY: On February 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from December 4, 2016 through January 28, 2017 (weeks 49-16 through 04-17) (decision # 93901). Claimant filed a timely request for hearing. On March 13, 2017, ALJ Seideman conducted a hearing, and on March 14, 2017, issued Hearing Decision 17-UI-78858, affirming the Department's decision. On March 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

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

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-78858 is reversed, and this matter is remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

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). For an individual on temporary layoff of four weeks or less with the individual's regular employer, 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, 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. OAR 471-030-0036(5)(b). For an individual on temporary layoff of more than four weeks, however, such individual must immediately seek work consistent with the requirements of subsection OAR 471-030-0036(5)(a), which requires individuals 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. OAR 471-030-0036(5)(c).

In Hearing Decision 17-UI-78858, the ALJ determined that, during the weeks at issue, claimant 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, because, although he was on temporary layoff with his regular employer, the layoff exceeded four weeks.¹ The ALJ found as fact that claimant did not conduct five work seeking activities during any week at issue, and therefore concluded that claimant did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.²

We agree with the ALJ that claimant's layoff with his regular employer exceeded four weeks, and that to be eligible for benefits, claimant 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. However, we disagree with the ALJ's finding that he did not conduct five work seeking activities during any week at issue. The ALJ never asked claimant about his work seeking activities during each of the weeks at issue, instead relying on the Department representative's testimony that when claiming benefits for the weeks at issue, claimant did not list a sufficient number of work seeking activities each week to make him eligible for benefits. Audio Record ~ 20:00 to 21:00. In written argument, however, claimant presented information and documentation showing that claimant might have engaged in five work seeking activities during at least some of the weeks at issue, but did not list them all when claiming benefits because he mistakenly believed that he was on temporary layoff of four weeks or less, and therefore only required to maintain contact with his regular employer.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant actively sought work during the weeks at issue, Hearing Decision 17-UI-78858 is reversed, and this matter is remanded for further development of the record.

On remand, the ALJ should conduct a full inquiry into whether claimant, regardless what he reported when claiming benefits each week, conducted at least five work seeking activities during each week at issue, with at least two of those being direct contact with an employer who might hire the individual. Work seeking activities include but are not limited to registering for job placement services with the Department, such as at a WorkSource office, 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)(A). Direct contact with an employer means making contact with an employer in person, by phone, mail, or electronically 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).

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-78858 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

¹ Hearing Decision 17-UI-78858 at 2-4.

² *Id.*

DECISION: Hearing Decision 17-UI-78858 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 5, 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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