

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0904**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 92604) concluding that claimant failed to actively search for work from January 1 through 21, 2017 (weeks 1-17 through 3-17). Claimant filed a timely request for hearing. On June 29, 2017, ALJ Wyatt conducted a hearing, and on July 7, 2017, issued Hearing Decision 17-UI-87448, affirming the administrative decision. On July 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSION AND REASONS:** Hearing Decision 17-UI-87448 is reversed and this matter remanded for further development of the record.

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). 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 limited exceptions, 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.* 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)(A). "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).

An individual who is on a temporary layoff for four weeks or less with the individual's regular employer and had, as of the layoff date, been given a date to return to work within four weeks or less, is considered to have actively sought 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 layoff occurred. OAR 471-030-0036(5)(b).

In Hearing Decision 17-UI-87448, the ALJ concluded that claimant was required to comply with the work search requirements set forth in OAR 471-030-0036(5)(a) because, “at the time of claimant’s temporary layoff he did not receive from his employer a definite date on which to return to work. The employer did not know exactly when claimant would be put back to work because the employer needed to wait until the snow stopped.” Hearing Decision 17-UI-87448 at 3. Because the ALJ found that claimant failed to conduct at least five work seeking activities per week, he concluded claimant was ineligible to receive benefits for weeks 1-17 through 3-17, the weeks at issue. *Id.* The ALJ failed to develop a record sufficient to support this conclusion, however.

The ALJ asked claimant no questions about the circumstances of his layoff. On remand, the ALJ must ask what was claimant’s regular employer, how long claimant had worked for that employer, and what type of work claimant performed for the employer. The ALJ must also ask claimant what was his last day of work for the employer prior to the layoff, when the employer told him he would be laid off, and exactly what the employer said to him when he told claimant he was being laid off.

At hearing, claimant testified that sometime during the weeks at issue, he contacted three employers by telephone about work. Audio Record at 8:45. Claimant also testified that he visited a Department Work Source office, and that a representative assisted him in setting up a job search activity on the computer. Audio Record at 11:26. The ALJ failed to question claimant sufficiently about job search activities he may have performed during the weeks at issue, however. On remand, the ALJ must ask claimant about each of the weeks at issue and inquire what specific work search activities he performed during each of these weeks. The ALJ must ask the Department representative (if one appears at the hearing) when claimant visited the Work Source office, what he the representative told him during that visit, if notes of the visit are available, and what, if any, work search activities claimant reported to the Department in his weekly claims.

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 searched for work during the weeks at issue, Hearing Decision 17-UI-87448 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 17-UI-87448 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** August 14, 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](http://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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