

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0941

Affirmed
Ineligible Week 18-17

PROCEDURAL HISTORY: On June 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from April 30 through May 6, 2017 (week 18-17) (decision # 92918). Claimant filed a timely request for hearing. On July 27, 2017, ALJ Murdock conducted a hearing, and on July 28, 2017, issued Hearing Decision 17-UI-89188, affirming the Department's decision. On August 5, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the hearing record. Claimant also failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on May 18, 2017. She claimed but did not receive benefits for the week of April 30 through May 6, 2017 (week 18-17), the week at issue.

(2) When claimant filed her claim for the week at issue, she did not report any work search activities. Consequently, the Department mailed her a letter inquiring why she did not report any work search activities and giving her the opportunity to submit her work searches when responding to the letter.

(3) Claimant responded to the letter by submitting copies of empty envelopes addressed to employers but did not provide required work search information, such as the date, telephone number and location of the employer contacted, the type of work sought, how the employer was contacted and the result of the contact.

(4) On June 7, 2017, the Department issued its benefit denial for the week at issue after concluding claimant did not actively seek work.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not actively seek work 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). 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).

Where, as here, the Department initially denies a claimant benefits for weeks claimed, the claimant has the burden to establish by a preponderance of evidence that the claimant is eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

At hearing, claimant did not dispute the Department’s evidence that she previously failed to provide the required work search information to establish that she actively sought work during the week at issue. She also failed to provide the required information at hearing. Accordingly, on this record, claimant did not meet her burden to establish that she actively sought work during the week at issue, and under OAR 471-030-0036(5), is ineligible for benefits for that week.

DECISION: Hearing Decision 17-UI-89188 is affirmed.

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

DATE of Service: August 23, 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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