

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0988**

*Reversed & Remanded*  
*Revocada & Remitada*

**PROCEDURAL HISTORY:** On June 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from October 23, 2016 through January 21, 2017 (weeks 43-16 through 03-17) (decision # 82641). Claimant filed a timely request for hearing. On August 1, 2017, ALJ Meerdink conducted a hearing, and on August 9, 2017, issued Hearing Decision 17-UI-89931, affirming the Department's decision. On August 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-89931 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 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).

In Hearing Decision 17-UI-89931, the ALJ concluded that claimant did not actively seek work from October 23, 2016 through January 21, 2017.<sup>1</sup> However, to determine whether claimant actively sought work during each of the weeks in issue, the ALJ needed to conduct a full and fair inquiry into the claimant's work seeking activities during each week at issue. The ALJ did not do so.

<sup>1</sup> Hearing Decision 17-UI-89931 at 3, 4.

Based on testimony from the Department witness, the work search activities claimant provided on his weekly claim responses showed on their face that claimant engaged in less than five total work seeking activities per week. Although the ALJ gave claimant two additional days to mail in records of work searches, which claimant took advantage of, the records provided only included references to direct contacts. Based upon the evidence provided, the ALJ concluded in Hearing Decision 17-UI-89931 “claimant has not presented sufficient persuasive evidence that he conducted at least five work seeking activities each week that he claimed benefits” and therefore was not eligible for benefits for the weeks at issue because he was not actively seeking work.<sup>2</sup> However, notable regarding claimant’s weekly claim responses and written documentation admitted as Exhibit 1 and Exhibit 2 is that claimant listed only direct contacts with employers, and no other types of work seeking activities. The ALJ did not ask claimant at hearing if he engaged in additional work search activities not listed on his weekly claim responses or submitted documentation, including activities such as updating a resume or reference list, reviewing newspapers or job placement websites, participating in job placement groups or agencies, and networking through social contacts. The ALJ should make those inquiries on remand.

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 was actively seeking work during each week claimed, Hearing Decision 17-UI-89931 is reversed, and this matter is remanded for development of the record.

**NOTE:** We note that in claimant’s Exhibit 1 he requested the services of a Spanish speaking interpreter for the original hearing and one was not provided. Although the ALJ inquired about his request and claimant responded that he understood what was being said, the audio record suggests that communication was difficult. On remand, a certified Spanish speaking interpreter should be provided.

**DECISION:** Hearing Decision 17-UI-89931 is set aside, and this matter remanded for further proceedings consistent with this order. *Decisión de la Audiencia 17-UI-89931 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*<sup>3</sup>

J. S. Cromwell and D. P. Hettle.

**DATE of Service: September 5, 2017**

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<sup>2</sup> *Id.*

<sup>3</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-89931 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.

**NOTE:** *La falta de cualquier partido de aparecer en la audiencia en la remisión no reinstalará el [#] de la decisión de la audiencia ni volverá esta materia a EAB. Solamente un uso oportuno para la revisión de la decisión subsecuente de la audiencia hará esta materia volver a EAB.*

**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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

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