

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1439**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On August 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 16, 2017 to July 22, 2017 (week 29-17) (decision # 154438). Claimant filed a timely request for hearing. On November 30, 2017, ALJ Griffin conducted a hearing, and on December 4, 2017 issued Hearing Decision 17-UI-98101, affirming the Department's decision. On December 12, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant argued that he had been seeking work and provided the names of several employers with which he has done so. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). Claimant did not show that circumstances beyond his control prevented him from presenting that information to the ALJ at the hearing, and, without establishing that he sought work with those employers during the week of July 16, 2017 to July 22, 2017, claimant did not show that the information was material to this case. EAB therefore did not consider claimant's new information when reaching this decision.

**FINDINGS OF FACT:** (1) On July 17, 2017, claimant filed an initial claim for benefits. He filed a weekly claim for benefits for the week of July 16, 2017 to July 22, 2017 (week 29-17), the week at issue. During the week at issue, claimant did not conduct five work seeking activities.

(2) The Department did not pay claimant benefits for the week at issue.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was not eligible for benefits during week 29-17.

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 few exceptions, none of which apply here, 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.* "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). Where, as here, the Department has *not* paid a claimant benefits, the claimant has the burden to prove by a preponderance of the evidence that he should have been paid. *See accord Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). In other words, claimant must prove that it is more likely than not that he conducted five work seeking activities during week 29-17, and that two of those activities involved direct contact with an employer to inquire about a job opening or apply for work.

Claimant alleged at the hearing that he actively sought work during week 29-17 because he looked in the paper, looked for help wanted signs, and applied for work with two markets and a few fast food restaurants. However, he did not report any activities to the Department when he filed his weekly claim for benefits, did not respond to the employer's letter requesting his work searches for that week, and told a Department employee in a phone call that he had not sought work that week. Audio recording at ~ 8:00-8:50. When cross-examined by the Department employee at the hearing, claimant testified that his direct contacts with fast food restaurants occurred the week after the week at issue. Audio recording at ~ 13:15. It was further revealed that he was out of town for at least a portion of the week at issue, and might have applied for work with the two markets the following week, as well. Audio recording at ~ 12:15-12:35; ~ 13:30.

Weighing the evidence, including the dispute over which week claimant might have contacted the two markets and fast food restaurants, and the likelihood that that contact did not occur in week 29-17, claimant at most established that his work seeking activities during week 29-17 included looking in the paper and looking for help wanted signs, and therefore did not consist of five activities, and did not include two direct contacts. Claimant therefore failed to show that it was more likely than not that he actively sought work during week 29-17, and he is ineligible for benefits for that week.

**DECISION:** Hearing Decision 17-UI-98101 is affirmed.

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

**DATE of Service:** January 16, 2018

**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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