

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0013

Affirmed
Eligible Weeks 20-17 Through 21-17
Ineligible Weeks 22-17 Through 34-17

PROCEDURAL HISTORY: On November 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of May 14, 2017 through August 26, 2017 (decision # 164313). Claimant filed a timely request for hearing. On December 12, 2017 ALJ S. Lee conducted a hearing, and on December 15, 2017 issued Hearing Decision 17-UI-99145, modifying the Department's decision and concluding claimant actively sought work during the weeks of May 14, 2017 through May 27, 2017 and did not actively seek work during the weeks of May 28, 2017 through August 26, 2017. On January 2, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he presented information that he did not offer during the hearing, contending that "the circumstances for my difficulty finding employment during the summer were not fully considered, nor was I able to provide relevant background information during my telephone hearing on December 12, 2017." OAR 471-041-0090(2)(October 29, 2006) allows EAB to consider information not offered during the hearing if the party offering it shows that it was prevented by factors or circumstances beyond its reasonable control from offering it at the hearing. Claimant's bare assertion that he was not able at hearing to offer the information he is now seeking to present by way of his written argument, without supporting detail, is insufficient to show that he was reasonably precluded from doing so during the hearing. For this reason, EAB did not consider claimant's new information, but considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Claimant was 63 years-old and certified to teach art in Oregon secondary schools. Claimant was not certified to teach classes other than in art. Chemawa Indian School had employed claimant to teach high school art during regular school years for 39 years, from 1978 through the present. Chemawa regularly laid claimant off during summers except for one summer in 1980 or

1981 when Chemawa offered a summer art course and employed claimant to teach it. Claimant has filed 28 unemployment insurance claims for benefits during his summer layoffs.

(2) On May 12, 2017, Chemawa laid claimant off for the summer of 2017. Claimant was going to return to Chemawa to teach art classes during regular school year 2017-2018. Chemawa did not offer summer classes during summer 2017. Exhibit 1 at 5. On May 17, 2017, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for the weeks of May 14, 2017 through August 26, 2016 (weeks 20-17 through 34-17), the weeks at issue. Claimant was given waiting week credit for week 20-17 and was paid benefits for weeks 21-17 through 34-17. Claimant's labor market was metropolitan Portland, including the surrounding suburban communities.

(3) The Department's Handbook for unemployment benefit claimants specifies that to be eligible to receive benefits during any week, a claimant needs to perform five work seeking activities in that week, two of which must be direct contacts with employers who might hire claimant. Claimant received and read the Department's Handbook.

(4) During the first weeks for which claimant claimed benefits, approximately weeks 20-17 and 21-17, claimant inquired at Chemawa about janitorial work he had learned might be available during the summer. Claimant also inquired about job openings related to his experience in the art field at Blick's Art Store and at the two Portland locations at which Luke's Frame Shops operated.

(5) During the weeks 22-17 through 34-17, claimant only sought work teaching high school art. During these weeks, claimant inquired about open positions eight times at Chemawa, even though he knew it was not offering summer school; five times at Portland Jewish Academy and Portland Public Schools, even though neither was offering summer art courses; twice at Lake Oswego, even though it was "rare" for that school district to hire outside teachers for summer school; and once at Woodburn, Oregon City, Hillsboro, Barlow, Canby and Beaverton, even though none of those districts offered summer art classes. Exhibit 1 at 4-6, 9-21. When claimant sought work at these schools or school districts, they were not soliciting applications for any open positions and were not recruiting for any positions. Claimant did not apply for work at any of these schools or school districts because they did not have any open positions.

(6) On August 28, 2017, during week 35-17, claimant returned to work as an art teacher at Chemawa for school year 2017-2018.

(7) On November 3, 2017, claimant spoke with a Department representative about his work seeking activities. Claimant told the representative that during the weeks at issue, he was only willing to accept work as an art teacher at a secondary school or as a janitor at Chemawa, and would not have accepted any other type of work. Exhibit 1 at 6.

CONCLUSIONS AND REASONS: Claimant actively sought work during weeks 20-17 and 21-17 and is eligible to receive benefits for those weeks. Claimant did not actively seek work during weeks 22-17 through 34-17 and is not eligible to receive benefits during those weeks.

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 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).

With respect to the first two of the weeks at issue, it appears that by contacting Chemawa about a possible opening for a janitorial work and the art store and two frame shops about positions that might be or might become available, claimant was arguably making genuine inquiries about potential job openings. Claimant stated he had learned that Chemawa might be hiring, and it appears plausible that the shops at which claimant applied reasonably *might* be hiring individuals with claimant's art background in some capacity. However with respect to the remaining weeks at issue, weeks 22-17 through 34-17, during which claimant contended he was seeking work at schools as an art teacher, it does not appear that claimant had any basis for believing that the 10 schools or school districts he contacted about art teacher openings had any such openings or that there was a legitimate possibility they would have any openings as the summer session progressed. Indeed, only one of them held any summer art classes at all, and it "rarely," if ever, hired teachers from outside that district, as claimant would have been. Exhibit 1 at 4. Where, as here, a claimant is making inquiries of employers only about a type of work that is virtually non-existent, like summer positions in and around Portland teaching art at the secondary school level, and claimant did not have a reasonable or plausible basis for thinking that those employers might conceivably have any such positions available, it does not appear that claimant was legitimately conducting a work search activity by directly contacting those employers about work or making those inquiries as part of a sincere, good faith effort to actually locate a job. While claimant suggested at hearing that he inquired about art teacher positions, and often made repeated inquiries of the same schools and school districts because "something might come up," there is no evidence suggesting or tending to suggest that he had any basis for sincerely or genuinely believing those schools or school districts might have any summer school art teacher positions available. Audio at ~15:24. On this record, it does not appear that claimant made two legitimate direct employer contacts during each of weeks 22-17 through 34-17 and, as a result, claimant did not actively seek work during those weeks. Accordingly, claimant is not eligible to receive benefits during weeks 22-17 through 34-17.

DECISION: Hearing Decision 17-UI-99145 is affirmed.

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

DATE of Service: February 6, 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. 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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