

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0449**

*Reversed*  
*Ineligible Weeks 5-18 to 7-18*

**PROCEDURAL HISTORY:** On March 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits because she did not actively seek work from January 28, 2018 to February 17, 2018 (decision # 90528). Claimant filed a timely request for hearing. On April 9, 2018, ALJ Scott conducted a hearing, and on April 11, 2018 issued Order No. 18-UI-107128, concluding that although claimant did not actively seek work during weeks 5-18 through 7-18, the Department was estopped from denying claimant benefits. On May 1, 2018, the Department filed an application for review with the Employment Appeals Board (EAB).

EAB considered the parties' written arguments when reaching this decision.

**FINDINGS OF FACT:** (1) On January 3, 2018, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits for the weeks of January 28, 2018 through February 17, 2018 (weeks 5-18 through 7-18), the weeks at issue. The Department paid claimant benefits for those weeks.

(2) On approximately January 29, 2018, claimant received and accepted a job offer and was scheduled to begin work on February 20, 2018. Claimant thought it would be unethical to continue seeking work with other employers when she planned to begin a new job on February 20<sup>th</sup>, and it would not make sense for her to keep looking for work. Audio recording at ~ 22:00, 25:00. Claimant assumed that she did not need to keep looking for work while claiming benefits because she had accepted the job offer. Audio recording at ~ 41:20.

(3) During the week of January 28, 2018 through February 3, 2018 (week 5-18), claimant did not seek work beyond her contact with her new employer. On approximately February 5, 2018, claimant filed a weekly claim for benefits for week 5-18 and reported her contact with her new employer to the Department as her only work search and provided the Department with her start date.<sup>1</sup>

(4) During the week of February 4, 2018 through February 10, 2018 (week 6-18), claimant did not seek work beyond contact with her new employer. On approximately February 12, 2018, claimant filed a weekly claim for benefits for week 6-18 and reported her contact with her new employer to the Department as her only work search.

(5) On February 16, 2018, claimant called an unknown Department phone number and spoke with an unknown individual.<sup>2</sup> She notified the individual that she had received and accepted an offer of work and asked if she needed to keep looking for work and reporting her work searches to the Department when she claimed. The individual with whom claimant spoke told claimant that she did. Claimant thought the individual was rude to her, and she thought it did not make sense that she should have to keep looking for work. Audio recording at ~ 21:45, 36:00. The same day, claimant called another Department phone number and described her situation to a different employee. She did not realize at the time that she was speaking with someone in the REA program, and did not realize that the REA program requirements differed from those of the unemployment insurance program. Audio recording at ~ 27:00. The second individual with whom claimant spoke told claimant she did not need to keep looking for work and exempted her from the REA interview. Audio recording at ~ 22:00, 39:00. Claimant accepted the information she received from the second person "as correct," disregarded the information she had received from the first employee, and proceeded on the information she had received from the second employee. Audio recording at ~ 22:30.

(6) During the week of February 11, 2018 through February 17, 2018 (week 7-18), claimant did not seek work other than with her new employer. On approximately February 20, 2018, claimant filed a weekly claim for benefits for week 7-18 and reported her contact with her new employer to the Department as her only work search.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not actively seek work during the weeks at issue, but we disagree with the ALJ that the Department is estopped from denying her benefits for that reason.

To be eligible to receive benefits, unemployed individuals must be actively seeking 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.*

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<sup>1</sup> We take notice of the approximate dates upon which claimant filed the three weekly claims at issue, which are contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

<sup>2</sup> Audio recording at 38:20 (claimant indicated that February 16<sup>th</sup> was the date of her conversations with the Department).

"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).

There is no dispute in this case that claimant did not conduct an "active work search" by conducting five work seeking activities each week that included at least two direct contacts with employers. The only issue in this case is whether the Department should be estopped from denying claimant benefits based upon her failure to actively seek work. The ALJ concluded that the Department was estopped from denying benefits to claimant. The ALJ found as fact:

[ ] After accepting the offer of employment, claimant called the Department and asked about whether she was still required to conduct five work seeking activities for each week claimed, given that she had gotten a job. Claimant explained her situation to the employee (whose name she did not get) and was told that since she had a definite job offer, which she had accepted, and a definite start date, she was no longer required to conduct work seeking activities. [ ] Claimant relied on this information and did not conduct any work seeking activities during the period at issue.<sup>3</sup>

The ALJ reasoned that claimant credibly testified that she received and relied upon information from the Department, and that the "employee with whom she spoke most likely misunderstood claimant's situation and believed that she was on a temporary layoff with a definite return to work date (as opposed to a new job with a definite start date several weeks hence). \* \* \* Although it would have been more convincing if claimant had been able to supply the name of the person from whom she got that information, it nonetheless had sufficient indicia of credibility . . . [and] lends credence to claimant's assertion that, but for receiving and relying on this information, claimant would have continued to conduct work search activities, as required, even though it seemed illogical to her."<sup>4</sup> We disagree.

As a preliminary matter, claimant first spoke with a Department employee about whether or not she needed to continue seeking work and reporting her work search activities to the Department on February 16<sup>th</sup>. She therefore could not have relied upon any Department employee's advice concerning her work search activities or reports prior to February 16<sup>th</sup>. Claimant filed her weekly claim for benefits for week 5-18 on approximately February 5, 2018, and her weekly claim for benefits for week 6-18 on approximately February 12, 2018. She neither tailored her work search activities during those weeks, nor decided how to report her work search activities during those weeks, based upon a detrimental reliance on information from the Department. Rather, she chose how to seek work and how to report her work searches during both of those weeks based upon her own erroneous assumption that she should not have to seek work with other employers after having accepted a job offer. The Department is not estopped from denying claimant benefits during weeks 5-18 and 6-18 based upon her failure to actively seek work during those weeks.

Claimant did not claim benefits for week 7-18 until February 20<sup>th</sup>, four days after speaking with two different Department employees about her work search requirements after having accepted a job offer. Therefore, advice she received during her calls with Department employees might have affected her work search activities during week 7-18. For the Department to be estopped from denying claimant

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<sup>3</sup> Order No. 18-UI-107128 at 1-2.

<sup>4</sup> *Id.* at 3.

benefits for week 7-18 based upon her failure to actively seek work, however, several elements must be met, including “proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it.” *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party “must have relied on the agency’s representations and the party’s reliance must have been reasonable.” *State ex rel SOS v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

The first element that must be met is that claimant must have been ignorant that the Department employee’s representation to her that she did not have to continue seeking work while claiming benefits after receiving a job offer was false. We cannot say that she was ignorant of that fact, as claimant testified that on the same day she was told she did not need to continue seeking work, she had also spoken with a different Department employee who told her that she did, in fact, need to continue seeking work. The second element that must be met is that the Department employee who told claimant that she did not need to continue seeking work had excused claimant from seeking work with knowledge of the facts. Although claimant generally described what she told that employee, it is apparent from the record that claimant was speaking with an REA program employee about whether or not she was excused from meeting REA program requirements, and it is not clear that the employee who excused claimant from her work seeking requirements was also aware that claimant was asking about the unemployment insurance program requirements, or had sufficient knowledge of the facts to advise claimant about those program requirements.

Claimant’s reliance on the information she received from the second employee must also have been “reasonable.” In this case, it does not appear that it was. Not only had she, the same day, received advice that contradicted the advice she later relied upon, the record shows that, at the time claimant received and relied upon the information she received from the second Department employee, claimant did not know what phone numbers she called, what employees she spoke with, or for what programs those employees worked. Rather, it appears that claimant questioned whether she had been correctly claiming benefits for weeks 5-18 and 6-18, called the Department and found out that she had not been, thought it did not make sense that she should have to continue seeking work when she had accepted a job offer, and when she called again and got advice consistent with her previous actions, decided to rely upon it without verifying the accuracy of that information. Under the circumstances, we cannot say that claimant’s reliance upon the statements of the second employee, which contradicted other information she had already received that day, was “reasonable.” The Department therefore is not estopped from denying claimant benefits for week 7-18.

For those reasons, we conclude that the Department should not be estopped from denying claimant benefits during weeks 5-18 through 7-18 based upon claimant’s failure to actively seek work as required by Oregon law and the applicable administrative rule. Claimant is, therefore, ineligible for benefits for those weeks.

**DECISION:** Order No. 18-UI-107128 is set aside, as outlined above.

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

**DATE of Service: June 1, 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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