

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0899**

*Reversed*  
*Eligible Week 23-18*

**PROCEDURAL HISTORY:** On June 25, 2018, the Oregon Employment Department (the Department) served notice of administrative decision concluding that claimant did not actively seek work for the period of June 3 through June 9, 2018 (week 23-18)(decision # 90349). On July 16, 2018, decision # 90349 became final without claimant having filed a timely request for hearing. On August 24, 2018, claimant filed a late request for hearing on decision # 90349. On September 12, 2018, ALJ Seideman conducted a hearing and issued Order No. 18-UI-116420, allowing claimant's late request for hearing but affirming decision # 90349. On September 15, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the ALJ's conclusion that claimant's late request for hearing be allowed because he showed good cause to extend the filing period are **adopted**.

**FINDINGS OF FACT:** (1) Pioneer Restoration employed claimant as a restoration technician until May 31, 2018 when he was laid off indefinitely until more work was available.

(2) On May 31, 2018, claimant filed an initial claim for unemployment insurance benefits. Claimant filed a claim for and was paid benefits for the week including June 3 through June 9, 2018 (week 23-18), the week at issue. When filing his claim for week 23-18, claimant reported that he had been temporarily laid off but did not report any work searches because he did not believe he was required to.

(3) Despite not reporting any work searches when filing his claim, during week 23-18, claimant sought work by reviewing Craig's list online for potential employers and "reached out to a few" such employers listed there. Audio Record ~ 27:45 to 30:00. He also followed up on a job application he had submitted the previous week to another potential employer, Central Oregon Disaster Restoration, after that employer contacted him to schedule an interview. He responded by participating in three such interviews with separate members of that employer's management team during that week. He also completed paperwork for that employer so they could conduct a background check. On June 8, 2018, claimant responded to a job offer from that employer by accepting it.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude that claimant actively sought work during the week 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). For purposes of ORS 657.155(1)(c), with few exceptions, an individual is actively seeking work when he or she conducts at least five work seeking activities per week, with at least two of the five being a direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (April 1, 2018). "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)(a)(A). "Direct contact" with an employer means "making contact with an employer in person, by phone, mail, or electronically 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).

As a preliminary matter, the Department retroactively denied claimant benefits for the week at issue after it concluded that claimant was required to, but did not actively seek work during that week. Where, as here, the Department initially pays a claimant benefits for weeks claimed, the Department has the burden to establish by a preponderance of the evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In Order No. 18-UI-116420, after finding that during the week at issue, a potential employer ran a background check on claimant and continued processing activities to see if claimant would be hired but that claimant engaged in no other work seeking activities, the ALJ concluded that claimant did not actively seek work and was ineligible for benefits because he did not perform at least five work search activities as required. Order No. 18-UI-116420 at 2, 5. We disagree because the record does not support the ALJ's conclusion.

It was undisputed that during week 23-18, claimant conducted a job search by reviewing Craig's list, a job placement web site, for potential employers and "reached out to a few" such employer's listed there, which we infer meant that he at least contacted those employers by phone, mail, or electronically to inquire about a job opening. He also followed up with a separate potential employer by participating in three job interviews with members of that employer's management team and completed paperwork for that employer so they could conduct a background check. Finally, he responded to a job offer from that employer by accepting it.

Given that the record shows claimant conducted more than five work seeking activities during week 23-18, including at least two direct employer contacts, we conclude that the Department did not meet its burden to establish that claimant did not actively seek work during that week. Accordingly, claimant is eligible for benefits for that week.

**DECISION:** Order No. 18-UI-116420 is set aside, as outlined above.

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

**DATE of Service: October 19, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.