

No. 1-15-1977

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SHARON L. LAMPLEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY;	)	
DIRECTOR OF THE ILLINOIS DEPARTMENT OF	)	
EMPLOYMENT SECURITY, JEFFREY D. MAYS; and	)	
BOARD OF REVIEW,	)	
	)	No. 15 L 50200
Defendants-Appellees.	)	
	)	
and	)	
	)	
SOUTH SUBURBAN TRAINING AND REHAB SERVICE	)	
C/O SEDGWICK BRUCE KIJEWski,	)	Honorable
	)	James M. McGing,
Defendant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Simon and Hyman concurred in the judgment.

**O R D E R**

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¶ 1 *Held:* The decision of the Illinois Department of Employment Security Board of Review that plaintiff was ineligible for unemployment benefits because she failed to establish she was actively seeking work was not clearly erroneous; circuit court judgment affirmed.

¶ 2 *Pro se* plaintiff Sharon Lampley appeals from an order of the circuit court of Cook County affirming the decision of the Illinois Department of Employment Security Board of Review (Board) that she was ineligible for unemployment benefits because she failed to establish that she actively searched for work from June 15 to July 12, 2014. On appeal, plaintiff contends that the Board's findings were against the manifest weight of the evidence and its decision was clearly erroneous. We affirm.

¶ 3 Plaintiff was employed as an in-home health care provider by South Suburban Training and Rehabilitation Services (South Suburban) from February 2013 to January or February 2014. On June 15, 2014, she filed a claim for unemployment benefits with the Illinois Department of Employment Security (Department). South Suburban protested, arguing that plaintiff had taken leave from work and never returned.

¶ 4 On July 20, 2014, plaintiff faxed a work search record to the Department. The work search record, included in the record on appeal, indicates that during the week ending June 22, 2014, plaintiff sent emails to Perdue Calumet College regarding two jobs, and sent an email and fax to Lincolnshire Health Center regarding another job. During the week ending June 29, 2014, she listed two in-person inquiries at Edgewater Systems on the same day, and contacted four employers at a job fair on another day. During the week ending July 6, 2014, she sent an email to U-Haul, inquired in-person about a job at Timberview, and sent an email to Fresenius Health Care. During the week ending July 13, 2014, she sent emails to Community Health Care and Purdue University, and inquired in-person regarding a job at Bridges Ark. The work search

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record indicated that some employers did not respond, and others stated they would contact plaintiff or were not hiring.<sup>1</sup> The record also contains notes from plaintiff's adjudication summary, stating that plaintiff also had been looking for work on "Indianacareer.net," "Career Net.Com," and "Indeed."

¶ 5 On July 22, 2014, the Department determined that plaintiff was ineligible to receive unemployment benefits from June 15 to July 12, 2014, because she had "not submitted a work search" or demonstrated that she was "actively seeking and available for work." On July 23, 2014, the Department issued a reconsidered decision finding plaintiff eligible for unemployment benefits. South Suburban appealed.

¶ 6 A telephone hearing before a referee occurred on September 23, 2014. After calling plaintiff without answer, the referee conducted the hearing with only testimony from Shannon Scofich, a South Suburban manager. Scofich testified that plaintiff did not return to work after her leave of absence, although work was available and offered to her. The referee found that plaintiff was ineligible for unemployment benefits because she "presented no evidence that she was able, available, or actively seeking new work" and "did not explain what she did, to find new work, during the period under review."

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<sup>1</sup> The record on appeal also includes a second work search record for the same period of time, which lists several contacts in addition to the contacts listed here. After reviewing the record and the parties' briefs, we find no indication that the second work search record, or the additional contacts it listed, was ever before the referee or the Board. Consequently, we will not consider the second work search record on review. *Interstate Material Corp. v. Human Rights Comm'n*, 274 Ill. App 3d 1014, 1017, n.1 (reviewing court cannot "go beyond the administrative agency's records").

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¶ 7 Following a rehearing on October 10, 2014, the referee found that plaintiff was eligible for benefits. South Suburban appealed to the Board, which remanded the matter for a new hearing because it did not have an adequate transcript for review.<sup>2</sup>

¶ 8 The new telephone hearing occurred on January 14, 2015. During the hearing, the referee indicated that he did not see a work search record in plaintiff's file. However, plaintiff's testimony was substantially similar to the work search record included in the record on review, with certain differences. Plaintiff testified that she applied online to a single job at Edgewater Systems following her in-person visit, while the work search record listed two separate entries for that employer. Additionally, plaintiff did not mention that she had applied to U-Haul by name. Also, plaintiff's testimony did not specify the number of employers that she contacted at the job fair, while the work search record listed four employers. The referee ruled that plaintiff was eligible for unemployment benefits, as she had contacted "seven or eight prospective employer[s], each week looking for work" and had registered with the Illinois Job Service and other online job services.

¶ 9 South Suburban appealed to the Board, which reversed the referee's ruling and found that plaintiff was ineligible for unemployment benefits. In its decision, the Board stated that it reviewed "the record of evidence" and the testimony from the hearing on January 14, 2015. The Board noted that plaintiff originally was denied unemployment benefits because she did not submit a job search when she filed her claim, and that she had not submitted a job search for the hearing. The Board found that plaintiff testified to "eight or nine contacts" between June 15 and July 12, 2014, or "on average, approximately two job searches a week." Additionally, the Board

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<sup>2</sup> The record on appeal does not include a transcript from the hearing on October 10, 2014.

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noted that plaintiff "made contact" with the Illinois Job Service but did not enter a resume or search for jobs during the benefits period. According to the Board, this did not constitute an "active job search." Plaintiff filed a complaint for administrative review, and the circuit court affirmed the Board's decision.

¶ 10 On appeal, plaintiff contends that the Board erred in finding that she was ineligible for unemployment benefits from June 15 to July 12, 2014. Specifically, plaintiff alleges that the Board misinterpreted the "final decision," misquoted "notes from the hearings," and consequently, mistakenly concluded that she testified to making a total of "seven or eight" contacts during the entire benefits period instead of making seven or eight contacts per week.

¶ 11 The State responds that no evidence indicates that plaintiff contacted seven or eight employers per week, and that her testimony shows she made no more than 11 contacts during the entire benefits period. As plaintiff indicated that two contacts were with the same employer, and omitted the name of another employer, the State submits that the evidence supports the Board's finding that she made a total of eight or nine contacts. Moreover, the State argues that plaintiff provided no evidence that the quality of her efforts established that she actively searched for work.

¶ 12 On administrative review, we review the final decision of the Board and not the decision of the referee or circuit court. *Petrovic v. Department of Employment Security*, 2016 IL 118562,

¶ 22. The Board is responsible for weighing the evidence, evaluating the credibility of witnesses, and resolving conflicts in the testimony, and we will reverse its factual findings only where they are contrary to the manifest weight of the evidence. *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶¶ 20, 26. Where, as here, the Board's decision involves a mixed question of law and fact, the "clearly erroneous" standard of review applies. *Petrovic*,

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2016 IL 118562, ¶ 20. The Board's final decision will be deemed clearly erroneous where the record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *Id.*

¶ 13 Receiving unemployment insurance benefits is a conditional right, "and the claimant bears the burden of proving his eligibility for those benefits." *Moss v. Department of Employment Security*, 357 Ill. App. 3d 980, 985 (2005). Under section 500(C) of the Unemployment Insurance Act (Act) (820 ILCS 405/500(C) (West 2014)), an unemployed individual is eligible to receive benefits with respect to any week only if the Director finds that the individual is able and available for work, "provided that during the period in question he was actively seeking work and he has certified such." On appeal, plaintiff challenges the Board's determination that she was not actively seeking work between June 15, 2014, and July 12, 2014.

¶ 14 The Act does not define the term "actively seeking work," although this court has found that the term contemplates each claimant's circumstances in view of prevailing labor market conditions when the claim is filed. *Brown v. Board of Review*, 8 Ill. App. 3d 19, 23 (1972). Additionally, the Administrative Code specifies that "[a]n individual is actively seeking work when he makes an effort that is reasonably calculated to return him to the labor force." 56 Ill. Adm. Code 2865.115(a) (2014). Factors that determine the reasonableness of an individual's efforts include, but are not limited to, "the individual's physical and mental abilities, his training and experience, the employment opportunities in the area, the length of unemployment, and the nature and number of work search efforts in light of the customary means of obtaining work in the occupation." *Id.* The quantity of job contacts "should be considered," but "is not necessarily determinative of an active search for work." 56 Ill. Adm. Code 2865.115(f) (2014). Rather, whether the individual is actively seeking work "is determined by the quality of his efforts." *Id.*

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The methods used should be "examined in light of those customarily used to obtain work in the occupation." *Id.*

¶ 15 In this case, the Board did not err in finding that plaintiff did not actively seek work from June 15 to July 12, 2014. The manifest weight of the evidence supports the Board's finding that plaintiff made a total of "eight or nine contacts" during the benefits period, as plaintiff testified that she contacted eight named employers, one unnamed employer, and attended a job fair. She did not specify how many employers she contacted or the number of jobs to which she applied at the fair, but, even if the four employers listed on the work search record are considered as individual contacts, plaintiff still would not have established that she actively sought work. The Administrative Code includes the following example, pertinent to the present appeal:

"The individual seeks work as a retail sales clerk. On a Monday morning, she visits a shopping mall, where she applies for work at seven stores and is rejected by each. For the rest of the week, she makes no effort to find work. This individual would be determined to be not actively seeking work, despite having made seven job contacts in one day." Ill. Adm. Code 2865.115(f)(1) (2014).

¶ 16 Here, plaintiff's job search was less active than the job search described as inadequate in the Administrative Code. The record shows that plaintiff never made more than four contacts on a single day or five contacts during a single week. She provided no evidence that her efforts constituted an active search for work in view of labor market conditions (*Brown*, 8 Ill. App. 3d at 23), or that her work search was reasonable considering her abilities, training and experience, length of unemployment, and local employment opportunities. 56 Ill. Adm. Code 2865.115(a) (2014). Consequently, we cannot say the Board's determination that plaintiff was not actively seeking employment was clearly erroneous.

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¶ 17 For all the foregoing reasons, we affirm the judgment of the circuit court of Cook County and uphold the Board's decision finding plaintiff ineligible to receive unemployment benefits from June 15 to July 12, 2014.

¶ 18 Affirmed.