

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0318

Hearing Decision 15-UI-34668 Affirmed
Hearing Decision 15-UI-34690 Affirmed
Ineligible

PROCEDURAL HISTORY: On February 3, 2015, the Oregon Employment Department (the Department) served two notices of administrative decision, the first (decision # 10036) concluding that claimant did not actively search for work during the weeks of December 7, 2014 through December 20, 2014 (weeks 50-14 and 51-14) and the second (decision # 95428) concluding that claimant did not actively search for work during the weeks of December 28, 2014 through January 10, 2015 (weeks 53-14 and 01-15). Claimant filed timely requests for hearing on both administrative decisions. On March 4, 2015, ALJ Seideman conducted a consolidated hearing, and on March 6, 2015 issued Hearing Decision 15-UI-34668, affirming administrative decision # 10036 and Hearing Decision 15-UI-34690, affirming administrative decision # 34690. On March 20, 2015, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-34668 and 15-UI-34690. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0318 and 2015-EAB-0319).

FINDINGS OF FACT: (1) For over the last twenty-six years, claimant has been employed as a truck driver for a corporation in which he owned a significant interest. The corporation did business under the name "Richard Robinson Trucking and Excavation." Audio at ~17:43. Throughout this period, claimant routinely claimed unemployment benefits when business was slow.

(2) On March 18, 2014, claimant filed an initial claim for unemployment benefits based on a purported layoff by the corporation in which he owned an interest. In April 2014, May 2014 and July 2014, claimant re-started his initial claim. Audio at ~21:50, ~23:03. On each of these occasions, the Department mailed a letter to claimant advising him that its work search requirements had changed as of

February 23, 2014, and that he was required to conduct five work seeking activities each week he claimed benefits unless he was only temporarily laid off for a period of up to four weeks following the week in which the temporary layoff occurred or was subject to other stated exceptions. Audio at ~11:21. The letter also advised claimant that if he was working part-time, he was required to start the required work seeking activities immediately. Audio at ~11:33.

(3) On December 3, 2014, the corporation in which claimant owned an interest purported to lay him off. Audio at ~18:49. On behalf of the corporation, claimant provided to himself a definite return to work date of January 4, 2015. Effective the week of December 7, 2014, claimant restarted his claim for unemployment benefits online. When he restarted his claim, claimant indicated that he was "temporarily laid off" and he was going to return to his regular work within four weeks, or on January 4, 2015. Audio ~11:12.

(4) Claimant claimed benefits for the week of December 7 through December 13, 2014 (week 50-14). During that week, claimant worked two hours for his corporation and earned \$28. Claimant claimed benefits for the week of December 14 through December 20, 2014 (week 51-14). During that week, claimant worked two hours for his corporation and earned \$28. Claimant did not claim benefits for the week of December 21 through December 27, 2014 (week 52-14). During that week, claimant worked for his corporation and earned \$336. Claimant claimed benefits for the week of December 28, 2014 through January 3, 2015 (week 53-14). During that week claimant worked eight hours for his corporation and earned \$112. Claimant claimed benefits for the week of January 4 through January 10, 2015 (week 01-15). During that week, claimant worked seven hours for his corporation and earned \$98. Weeks 50-14 through 51-14, 53-14 and 01-15 are collectively referred as the weeks at issue. In December 2014 and January 2015, the Department sent letters to claimant stating that if was working part-time when he claimed benefits, he needed to perform five work seeking activities each week and outlining examples of acceptable activities.

(5) During the weeks at issue, claimant did not perform any work seeking activities other than keeping in touch with his corporation. Because claimant's corporation had technically characterized his work status as temporarily laid off, claimant believed that he was subject the exception to the usual work seeking requirements for temporarily laid off employees even though he worked for his corporation during each of the weeks at issue. On past occasions, when claimant claimed benefits, he did not perform the usual work seeking activities because he had characterized his employment status as temporarily laid off.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks of December 7, 2014 through December 20, 2014 (weeks 50-14 and 51-14) and the weeks of December 28, 2014 through January 10, 2015 (weeks 53-14 and 01-15).

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), and individual must 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). Effective February 23, 2014, subject to certain exceptions, individuals are required to conduct at least five work seeking activities per week, with two such activities being direct contacts with employers who might hire the individual and three other types of work seeking activities. OAR 471-030-0036(5)(a).

An individual who is on a temporary layoff of four weeks or less with his regular employer and who has been given a date to return to work, is exempted from the general requirements of an active work search and is considered to be actively seeking work if the individual remains in contact with and is capable of accepting and reporting for any suitable work with the individual's regular employer for during the four week period of the layoff. OAR 471-030-0036(5)(b).

In this case, claimant did not dispute that he performed no work seeking activities during the weeks at issue other than maintaining contact with his corporation, his ostensible employer. The sole issue is whether claimant was exempt from the requirement of five work-seeking activities for each week that he claimed benefits because he was on a temporary layoff of four weeks or less and had a definite date to return to work. Aside from asserting over and over that he was on "laid off," he presented no other evidence of this work status during the weeks at issue. Audio at ~15:00, ~23:32, ~25:13, ~26:29. While claimant's contentions are entitled to some weight, they are also suspect since it appears from the hearing testimony that he controlled how his corporation characterized his work status during the weeks at issue. The more objective evidence about claimant's work relationship with the corporation during the weeks at issue shows an unbroken pattern of working some hours, admittedly not full-time, for the corporation in every week of the supposed layoff. Reasonably construed, and as the term is commonly used, "layoff" means "the act of ending the employment of a worker or group of workers" or "a period of time during which there is no activity." <http://www.merriam-webster.com/dictionary/layoff>. From the regularity with which claimant work during the weeks at issue, the principal difference in his relationship with the employer during this supposed layoff and during period before the layoff was the number of hours of that he worked and not whether or not he worked. There was no temporary cessation of his usual work activities on behalf of the corporation or temporary change in his status vis-à-vis the corporation during the period he called a temporary layoff. It appears, most reasonably, that during the weeks at issue, claimant was not "laid off," instead, his hours were reduced from full-time to part-time. For this reason, and because the weeks at issue occurred after February 23, 2014, claimant was required to conduct five work seeking activities during each of the weeks for which he claimed benefits. Because claimant did not perform those work seeking activities during any of the weeks at issue, claimant was not actively seeking work and was not eligible to receive benefits during those weeks.

Claimant did not actively seek work during the weeks of December 7, 2014 through December 20, 2014 (weeks 50-14 and 51-14) and December 28, 2014 through January 10, 2015 (weeks 53-14 and 01-15). Claimant was not eligible to receive benefits during those weeks

DECISION: Hearing Decision 15-UI-34688 is affirmed.
Hearing Decision 15-UI-34690 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: May 12, 2015

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.

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.