

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0716-R

Reconsideration is Allowed
Hearing Decisions 15-UI-39766 and 15-UI-39767 Remain Undisturbed

PROCEDURAL HISTORY: On May 6, 2015, the Oregon Employment Department (the Department) served two notices of two administrative decisions concluding claimant did not actively seek work from January 18, 2015 to February 14, 2015 (decision # 81013) and March 1, 2015 to March 28, 2015 (decision # 82537). Claimant filed a timely request for hearing. On June 5, 2015, ALJ Shoemake conducted a consolidated hearing, and on June 9, 2015 issued Hearing Decisions 15-UI-39766 and 15-UI-39767, affirming the Department's decision. On June 12, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On June 12, 2015, EAB issued Employment Appeals Board Decisions 2015-EAB-0716 and 2015-EAB-0717, affirming the hearing decisions. On June 29, 2015, claimant filed requests for reconsideration of both decisions with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of these matters. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0716-R and 2015-EAB-0717-R).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. On reconsideration, Employment Appeals Board Decisions 2015-EAB-0716 and 2015-EAB-0717, adopting Hearing Decisions 15-UI-39766 and 15-UI-39767, remain undisturbed.

OAR 471-041-0145 provides that any party may request that EAB reconsider its decision "to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." In her argument to EAB, claimant contended that EAB erred in adopting the ALJ's decisions in these matters because the dates of claimant's January 2015 layoff and subsequent return to work, as stated in the ALJ's decisions, were incorrect. Claimant averred that she was laid off for "exactly 28 days," and, accordingly, was exempt from having to seek work beyond maintaining contact with her existing employer during that period.

OAR 471-030-0036(5)(b)(A) states, in pertinent part, that an individual "on temporary layoff of four weeks or less" need not seek work outside existing employment while laid off work if, "as of the layoff date," she had "been given a date to return to full-time work..." As a preliminary matter, claimant testified at the hearing that she was never given a return to work date by her employer, but was instead told she would be laid off for "four weeks" and she figured out the dates on her own. There is no dispute, therefore, that claimant was never "given a date to return to full-time work." Claimant also testified at the hearing that her last day of work prior to the layoff was January 16, 2015, making the effective date of her layoff January 17, 2015. Although claimant identified the date of her initial claim filing as January 18, 2015 and factored her calculation of 28 days from that date, the rule states that the starting point of the four-week calculation begins "as of the layoff date," which occurred January 17, 2015, the first date of claimant's layoff period. Finally, in her argument, claimant stated that she was "back at work full time" on February 16, 2015. That means she was laid off from January 17, 2015 through February 16, 2015, for a total of 31 days, which is more than four weeks.

For the foregoing reasons, we conclude that claimant was not "on temporary layoff of four weeks or less," and did not have a "date to return to full-time work," and, therefore, was not exempt from the requirement that she actively seek work during her layoff period. EAB and the ALJ did not err in concluding that claimant was not eligible for benefits during her January 2015 layoff period based on her failure to seek work.

Claimant did not assign error to any portion of the decision(s) concluding that she was not eligible for benefits during her March 2015 layoff.

DECISION: Reconsideration is allowed. On reconsideration, Hearing Decisions 15-UI-39766 and 15-UI-39767 remain undisturbed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: June 30, 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.

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