

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1474

Affirmed
Ineligible Weeks 36-15 to 38-15 and 40-15

PROCEDURAL HISTORY: On October 23, 2015, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding that claimant did not actively seek work from September 6, 2015 to September 26, 2015 (decision # 94732), and the other concluding that claimant did not actively seek work from October 4, 2015 to October 10, 2015 (decision # 95932). Claimant filed timely requests for hearing. On November 20, 2015, ALJ Shoemake conducted a consolidated hearing, and on November 24, 2015 issued Hearing Decisions 15-UI-48298, affirming decision # 95932, and 15-UI-48300, affirming decision # 94732. On December 7, 2015, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-48298 and 15-UI-48300. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-1473 and 2015-EAB-1474).

FINDINGS OF FACT: (1) On April 11, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant reported at that time that he was on a temporary layoff from work with his regular employer.

(2) On September 8, 2015, claimant's regular employer laid claimant off from his full time position. At the time, the employer told claimant that his layoff was on a week-to-week basis and instructed him to report to the work site each Monday to check in about returning to work. The employer did not give claimant a definite date to return to full time work.

(3) On September 10, 2015, claimant restarted his unemployment insurance claim. He claimed benefits for the week of September 6, 2015 to September 12, 2015, and reported that he was temporarily laid off work for four weeks or less with a date to return to full time work scheduled for October 5, 2015. Claimant picked the October 5th date as his return to work date because the employer had not scheduled

a date for claimant to return to full time work, and, if claimant used the following Monday as his return to work date each time he filed a weekly claim, the Department denied his claim for benefits.

(4) On Monday, September 14, 2015, claimant reported to the work site. The employer paid claimant for nine hours of work that week. Claimant claimed benefits for the week of September 13, 2015 to September 19, 2015, and reported that he was on a temporary layoff of four weeks or less.

(5) On Monday September 21, 2015, claimant reported to the work site. The employer paid claimant for the two hours he was at the work site checking in about returning to work. Claimant claimed benefits for the week of September 20, 2015 to September 26, 2015, and reported that he was on a temporary layoff of four weeks or less.

(6) On Monday, October 5, 2015, claimant reported to the work site. He was paid for part time work that week. Claimant claimed benefits for the week of October 4, 2015 to October 10, 2015, and reported that he was on a temporary layoff.

(7) During the weeks at issue, claimant did not work full time for the employer. None of claimant's earnings from his employment exceeded his weekly benefit amount. Claimant did not perform any work seeking activities beyond his contacts with the employer.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed, with limited exceptions. ORS 657.155(1)(c). Actively seeking work means conducting five work seeking activities, including at least two direct employer contacts, during each week claimed. OAR 471-030-0036(5)(a). One exception set forth in OAR 471-030-0036(5)(b) provides, in pertinent part, that an individual on a temporary layoff of four weeks or less with the individual's regular employer need not seek work beyond maintaining contact with his regular employer, provided "the individual had, as of the layoff date, been given a date to return to full-time work or for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount." However, the rule also provides that the individual *does not* meet the requirements if he "had not, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount." *Id.*

The only applicable circumstance under which claimant might be excused from the requirement that he actively seek work as a condition of his eligibility to seek benefits is if he was on a temporary layoff as defined by OAR 471-030-0036(5)(b). However, for that exemption to apply, claimant's regular employer must have given him a date to return to full time duty, or work for remuneration that exceeded his weekly benefit amount. Claimant reported to the Department that the employer had given him the date of October 5th, but admitted at the hearing that he had come up with that date on his own. In fact, the employer merely instructed claimant to check in with the employer on a weekly basis without any real anticipation that claimant would return to full time work or work that paid more than his weekly benefit amount by any particular date. Therefore, based on claimant's testimony, the exemption from the requirement that he actively seek work as a condition of his eligibility for unemployment insurance benefits does not apply.

Claimant was required to actively seek work by performing five work-seeking activities during each of the weeks at issue, two of which included direct employer contacts. The record shows that claimant made only one direct employer contact each week when he maintained contact with his regular employer, and performed no other work-seeking activities.

Claimant argued, nevertheless, that he should be found eligible for benefits, because the applicable laws and rules were unclear to him, he was confused about the manner in which the employer provided him with part time work, and mistaken about whether or not to report that he was on a layoff. However, the laws and rules applicable to this case do not contain any exceptions to the work search requirement that cover claimant's situation, and claimant cannot be found exempt from the work search requirement on that basis.

Claimant did not actively seek work during the weeks at issue. Therefore, he is not eligible for benefits.

DECISION: Hearing Decisions 15-UI-48298 and 15-UI-48300 are affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 7, 2016

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.