

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1542

Affirmed
Ineligible

PROCEDURAL HISTORY: On September 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from June 14 through August 1 and August 9 through 15, 2015 (decision # 125551). Claimant filed a timely request for hearing. On December 15, 2015, ALJ Wipperman conducted a hearing, and on December 23, 2015 issued Hearing Decision 15-UI-49906, affirming the Department's decision. On December 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from June 14 through August 1 and August 9 through 15, 2015 (weeks 24-15 through 30-15, and week 32-15), the weeks at issue. The Department paid claimant benefits for those weeks.

(2) On June 10, 2015, claimant was laid off from full time work by his regular employer, and was given a return to full time work date of September 8, 2015. Claimant's regular employer also offered him part-time work from June 30 through July 30, 2015. However, the weekly pay did not exceed claimant's weekly benefit amount of \$176. Claimant accepted the offer, and worked part time for his regular employer from June 30 through July 30, 2015.

(3) Claimant did not search for work during weeks 24-15 through 30-15. He did not conduct five work seeking activities, with at least two of those being direct contact with an employer who might hire him, during week 32-15.

CONCLUSIONS AND REASONS: We agree with the Department and 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. ORS 657.155(1)(c). Where, as here, the Department initially pays a claimant benefits, the Department has the burden to establish by preponderance of evidence that the individual is not eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

For purposes of ORS 657.155(1)(c), an individual 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). Individuals are typically "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment 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" means "making contact with an employer . . . 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).

However, for an individual on temporary layoff of four weeks or less with the individual's regular employer, if the individual had, 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, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b)(A). The individual no longer meets the requirements of this subsection if four calendar weeks have passed following the week in which the temporary layoff occurred; at that time, the individual must seek work consistent with OAR 471-030-0036(5)(a) in addition to the individual's regular employer. *Id.* The individual does not meet the requirements of OAR 471-030-0036(5)(b)(A) if the individual 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. OAR 471-030-0036(5)(b)(B).

For an individual on temporary layoff of more than four weeks with the individual's regular employer, such individual must immediately seek work consistent with the requirements of OAR 471-030-0036(5)(a). OAR 471-030-0036(5)(c).

On June 10, 2015, claimant was laid off from full time work by his regular employer, and was given a return to full time work date of September 8, 2015. Claimant's temporary layoff from full time work therefore exceeded four weeks. As of June 10, claimant was given a return to part-time work date of June 30, 2015. However, the remuneration paid or payable for that work did not exceed claimant's weekly benefit amount. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A), and was required to immediately seek work consistent with the requirements of OAR 471-030-0036(5)(a).

It is undisputed that claimant conducted no work search activities during weeks 24-15 through 30-15. He therefore did not actively seek work during those weeks. At hearing claimant asserted that he sought work during week 32-15. Audio Record at 16:15. However, he was unable to provide information that would support a finding that he conducted five work seeking activities that week, with at least two of those being direct contact with an employer who might hire the individual, as required under OAR 471-030-0036(5)(a). *See* Audio Record at 16:30-17:00, 19:30-20:30. In addition, claimant testified that he accurately reported his work seeking activities when he filed his weekly claims for benefits, and the Department's witness testified that claimant reported no work search activities for week 32-15. Audio

Record at 10:30, 17:00-17:30, 22:00-22:30. Absent a basis for concluding that the Department's witness was not credible, the preponderance of evidence shows that claimant did not actively seek work during week 32-15.

Claimant therefore did not actively seek work during the weeks at issue, and is not eligible for benefits for those weeks.

DECISION: Hearing Decision 15-UI-49906 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 19, 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.

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