

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0001

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not actively seeking work during the weeks of October 11, 2015 through October 24, 2015 (decision # 151452). Claimant filed a timely request for hearing. On December 16, 2015, ALJ Seideman conducted a hearing, and issued Hearing Decision 15-UI-49523, affirming the Department's decision. On January 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but failed to certify that he provided a copy of that argument to the other parties as required by OAR 471-041-0080 (October 29, 20016). Claimant's written argument also contained information that he did not present at the hearing, and he did not show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond his reasonable control prevented him from offering this information during the hearing. For these reasons, EAB did not consider the new information that claimant sought to present. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Before October 2015, claimant was working full-time as a project manager and designer for Fuller Cabinets.

(2) Sometime before the week beginning October 4, 2015, an employer representative told claimant his work hours were going to be significantly reduced starting the week beginning October 4, 2015 (week 40-15). The representative told claimant that "it would be about a month" before he was able to return to full-time work. Audio at ~8:50. The representative did not provide a definite date when claimant would return to work. Audio at ~11:45.

(3) During the week beginning October 4, 2015, claimant took a vacation and did not work. Sometime later, claimant filed a claim for benefits. The claim was determined valid. Claimant claimed benefits for the weeks October 11, 2015 through October 24, 2015 (weeks 41-14 through 42-15), the weeks at issue. During week 41-14, claimant worked approximately 4 to 6 hours for the employer. During week

42-15, claimant worked approximately 9 hours for the employer. During weeks 41-15 and 42-15, claimant did not perform any work seeking activities.

(4) On October 26, 2015 (during week 43-15), claimant returned to full-time work for the employer.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during weeks 41-15 and 42-15. Claimant is not eligible to receive benefits during those weeks.

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), 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). Unless an individual falls within an exception to the Department's work-seeking requirements, the individual is "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.* "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). Individuals who, as of the date they are laid off, were given by the employer a **date to return to full time work** that is four weeks or less from the date of the lay-off, are considered to be actively seeking work by remaining in contact with the employer and being capable of accepting and reporting for suitable work with that employer for a period of up to four weeks following the end of the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b)(A) (emphasis added).

It was undisputed that claimant did not engage in any work-seeking activities during the weeks at issue other than remaining in contact with the employer, and performing some work for it. The sole issue is whether claimant fell within the exception to the work seeking requirements of OAR 471-030-0036(5)(a). Claimant testified the employer told him he would return to full-time work "in about a month," but he candidly stated that the employer did not give him a definite date when he was going to be allowed to resume full-time work. Audio at ~8:48, ~11:45. While there was no reason to disagree with claimant's statements that the employer was "trustworthy" about his return to work within four weeks or less, "it was obvious they wanted to keep me working for them," and it would have put him in a "bad spot" if he was required to seek work from other employers during this temporary layoff, there is no exemption from the strict requirements of OAR 471-030-0032(5)(b) where an exception from the general work-seeking requirements of OAR 471-030-0036(5)(a) is sought based on a temporary layoff. Because the employer did not give claimant a definite date when he would return to work, claimant cannot take advantage of the exception to the general work search requirements set out at OAR 471-030-0036(5)(b) for temporary layoffs. Absent falling within this exception, claimant was required to perform five work-seeking activities during each week that he claimed benefits. Claimant did not do so, and therefore he was not actively seeking work within the meaning of OAR 471-030-0036(5) during the weeks at issue.

Claimant did not actively seek work during weeks 41-15 and 42-15. Claimant is ineligible to receive benefits during those weeks.

DECISION: Hearing Decision 15-UI-49523 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 28, 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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