

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0308

Reversed
Eligible Weeks 49-15 through 52-15

PROCEDURAL HISTORY: On January 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from December 6, 2015 through January 2, 2016 (decision # 75450). Claimant filed a timely request for hearing. On February 24, 2016, ALJ Monroe conducted a hearing, and on March 3, 2016 issued Hearing Decision 16-UI-54299, affirming the Department's decision. On March 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from December 6, 2015 through January 2, 2016 (weeks 49-15 through 52-15), the weeks at issue. The Department paid claimant benefits for those weeks.

(2) Claimant typically worked for his regular employer ("the employer") full time, Monday through Friday. He worked for the employer full time from Monday, November 30, 2015 through Friday, December 4, 2015, including a full shift on December 4.

(3) Claimant was next scheduled to work on Monday, December 7, 2015. On December 4, 2015, however, the employer notified claimant that he was being temporarily laid off, and that he would return to full time work on Monday, January 4, 2016. During the weeks at issue, claimant remained in contact with, and was capable of accepting and reporting for work with, the employer.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant actively sought 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 a preponderance of evidence that claimant 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). Typically, individuals are "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.* 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). 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).

In the present case, it is undisputed that during the four weeks at issue, claimant was on temporary layoff with his regular employer, had been given a date to return to full time work, and remained in contact with, and was capable of accepting and reporting for work with, that employer. At issue is whether, as of the layoff date, claimant had been given a definite return to work date that was no more than four weeks from the date on which he was laid off. Hearing Decision 16-UI-54299 determined that claimant was not, because he was laid off on Friday, December 4, 2015 and given a return to work date of Monday, January 4, 2016.¹ However, although claimant was notified on December 4, 2015 that he was being laid off, he worked a full shift that day, had not been scheduled to work the following weekend. Claimant was laid off effective Monday, December 7, 2015, the first day he missed work due to the layoff. Thus, as of the December 7 layoff date, claimant had been given a definite return to work date of four weeks from the date on which he was laid off.

Under OAR 471-030-0036(5)(b), claimant actively sought work during the four weeks at issue by remaining in contact with, and being capable of accepting and reporting for work with, the employer. Claimant therefore is eligible for benefits for the weeks at issue.

DECISION: Hearing Decision 16-UI-54299 is set aside, as outlined above.²

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

DATE of Service: April 15, 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

¹ Hearing Decision 16-UI-54299 at 3.

² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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