

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0346

Affirmed
Ineligible

PROCEDURAL HISTORY: On February 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 6, 2015 through January 16, 2016 (decision # 124708). Claimant filed a timely request for hearing. On March 9, 2016, ALJ Demarest conducted a hearing, and on March 10, 2016 issued Hearing Decision 16-UI-54729, affirming the Department's decision. On March 28, 2016, claimant filed an application for review of Hearing Decision 16-UI-54729 with the Employment Appeals Board (EAB).

EAB considered claimant's written arguments when reaching this decision.

FINDINGS OF FACT: (1) On April 15, 2015, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims and either was given waiting week credit or paid benefits for the weeks including December 6, 2015 through January 16, 2016 (weeks 49-15 through 02-16), the weeks at issue.

(2) Claimant's customary occupation was foreman for Modular Paving Systems, Inc. (Modular), for which he remained employed during the weeks at issue. On December 6, 2015, the employer told claimant that he was being laid off from full-time work due to job delays. Audio Record ~ 21:25 to 23:00. Claimant was not given a definite date for return to full-time work.

(3) When filing each of his weekly claims for benefits online, claimant marked a box that he was on "temporary layoff," which meant he was reporting that he had been laid off work by his employer and had been given a return to work date that was within four weeks of his layoff date. Audio Record ~ 13:30 to 17:00. Claimant understood that workers on "temporary layoff" did not have to conduct a work search during the four-week period. However, for each of the weeks from December 6, 2015 through January 10, 2016, claimant reported part-time hours and earnings with the employer.

(4) During the week of December 6, 2015 to December 12, 2015, claimant worked part time for Modular and contacted three other potential employers to seek work. During the week of December 13,

2015 to December 19, 2015, claimant worked part time for Modular, contacted a construction company for work, and contacted his parents for work or a referral to family friends for work. During the week of December 20, 2015 to December 26, 2015, claimant received some holiday pay and contacted Modular, but did not seek any other work. During the week of December 27, 2015 to January 2, 2016, claimant received some holiday pay and contacted Modular, but did not seek any other work. During the week of January 3 to January 9, 2016, claimant contacted Modular, but did not seek any other work. During the week of January 10 to January 16, 2016, claimant contacted Modular, but did not seek any other work. Claimant returned to full-time work with Modular on January 17, 2016.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. 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). The only relevant exception to that requirement is for individuals who are on a temporary layoff from their regular employment. OAR 471-030-0036(5) (February 23, 2014).

In order for the temporary layoff exception to apply, claimant must have been laid off work for a duration of four weeks or less, *and*, 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 equaled or exceeded his weekly benefit amount. OAR 471-030-0036(5)(b)(A). Claimant must meet all of those elements to be considered on a temporary layoff. In this case, however, claimant did not meet any of them. Although claimant was laid off from full-time work, he was not laid off from all work, the length of time claimant was going to be off work was indefinite, and claimant was not given an actual return to work date. In addition, because the amount of work claimant expected to perform in any given week depended on employer needs, claimant's anticipated return to work was not necessarily for full-time work or work for which remuneration is paid or payable that equaled or exceeded his weekly benefit amount. For those reasons, claimant cannot have been considered to be on a "temporary layoff," and was not excused from the requirement that he seek other work as a condition of getting benefits.

Claimant was working reduced or part-time hours for his regular employer due to indefinite job delays. He was, therefore, required to do "what an ordinary and reasonable person would do to return to work at the earliest opportunity," which, according to the Department, is conducting "at least five work seeking activities per week," including two direct contacts and three other work seeking activities. OAR 471-030-0036(5)(a). "Direct contact" means making contact with an employer in person, by phone, by mail or electronically to "inquire about a job opening or apply for job openings." OAR 471-030-0036(5)(a)(B). "Work seeking activities" include registering for job placement services, attending job placement meetings, participating in a job club or networking group, updating a resume, reviewing help wanted ads without responding to them, or making direct contact with an employer. OAR 471-030-0036(5)(a)(A).

During the week of December 6 to December 12, claimant engaged in four work seeking activities, consisting of direct contacts with Modular and three other potential employers. During the week of December 13 to December 19, claimant engaged in three work seeking activities, consisting of direct contacts with Modular and two other potential employers. During the week of December 20 to December 26, claimant engaged in one work seeking activity, consisting of his direct contact with Modular. During the week of December 27 to January 2, claimant engaged in one work seeking

activity, consisting of his direct contact with Modular. During the week of January 3 to January 9, claimant engaged in one work seeking activity, consisting of his direct contact with Modular. During the week of January 10 to January 16, claimant engaged in one work seeking activity, consisting of his direct contact with Modular. Claimant did not perform the five activities the Department requires to constitute an active work search in any week at issue. He was, therefore, not “actively seeking work” as required, and is not eligible to receive unemployment insurance benefits for any of the weeks at issue.

DECISION: Hearing Decision 16-UI-54729 is affirmed.

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

DATE of Service: April 26, 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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