

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0346-R

Request for Reconsideration Granted
Appeals Board Decision 2016-EAB-0346 Adhered to on Reconsideration

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). On April 26, 2016, EAB issued Appeals Board Decision 2016-EAB-0346, affirming the hearing decision under review.

On May 26, 2016, EAB received a letter from claimant in which he asked for a new hearing, and provided additional argument and information to support his claim that he was eligible for benefits for the period at issue, December 6, 2015 through January 16, 2016 (weeks 49-15 through 2016). In accordance with ORS 657.290(3), EAB will exercise its discretion to reconsider its decision and address some of the issues raised in claimant’s May 26 letter.

Claimant contended that Hearing Decision 16-UI-54729 “was made not only from a half hearing that I was not given a chance to freely speak but also on wrong information.” The audio recording of the March 9, 2016 hearing shows that claimant disconnected from the hearing after 31:40 minutes had elapsed. During the 31:40 minute hearing, however, the Department representative testified and claimant had an opportunity to cross examine her. Claimant also completed his testimony, and responded when the ALJ asked him if he had “anything else you want to tell me.” Audio recording at 29:20. Claimant disconnected from the hearing after the ALJ asked him a second time if he had “anything else” he wanted to say, and before he could respond. Audio recording at 31:09. Based on this record, we do not conclude that claimant’s disconnection from the hearing materially affected his ability to present evidence and argument. Nor do we find that claimant was denied an opportunity “to freely speak” during the hearing.

In his May 26 letter, claimant asserted that EAB erred by concluding that he was not on a temporary layoff from his regular employer under OAR 471-030-0036(5), and was therefore required to conduct an

active work search during the weeks at issue. In support of his assertion that he was on temporary layoff, claimant stated that his regular employer gave him a return to full time work date of January 4, 2016.

An individual claiming unemployment benefits is required to perform five work seeking activities per week, unless the individual is on a temporary layoff from a regular employer. OAR 471-030-0036(5)(a) (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 that is equal to or exceeds the claimant's weekly benefit amount. OAR 471-030-0036(5)(b)(A). We note that claimant's assertion—that his regular employer gave him a return to work date of January 4, 2016 – contradicts the evidence he provided at the hearing. At the hearing, claimant testified that his last day of work for the employer was December 4, 2015, that the employer told him he would probably be off “for a couple of weeks,” and that claimant “got the vibe” the layoff might last through the end of the year. Audio recording at 20:33, 22:07 and 22:33. Even if the employer told claimant he would return to full time work on January 4, 2016, as claimant now asserts, the period of layoff would have been 32 days, not the 28 days required by OAR 471-030-0036(5)(b). We therefore affirm our conclusion that claimant was not temporarily laid off by his regular employer during the weeks at issue and was required to perform five work seeking activities per week.

Also in his May 26 letter, claimant contended that he actively looked for work during the weeks at issue. Claimant had full opportunity to present his work seeking activities during the hearing; we reviewed his testimony and agreed with the ALJ's conclusion that these activities did not meet the requirements of OAR 471-030-0036(5)(a). Claimant has provided no evidence or argument that he performed any additional work seeking activities about which he did not testify at the hearing.¹ We therefore find that we did not err in affirming the ALJ's conclusion that claimant's work search did not comply with the requirements of the applicable rule.

For the reasons stated above, we conclude that claimant's May 26, 2016 letter presents no error of fact or law in Appeals Board Decision 2016-EAB-0346 that requires correction. *See* ORS 657.290(3) (reconsideration by EAB may include issuing a new decision “to the extent necessary and appropriate for the correction of a previous error of fact or law.”)

DECISION: Reconsideration is granted. Appeals Board Decision 2016-EAB-0346 is adhered to on reconsideration.

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

DATE of Service: May 31, 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 Also in his May 26 letter, claimant asked for a “phone call,” noting that “I haven't talked to anyone yet.” Claimant perhaps misunderstood EAB's role. By law, EAB performs a *de novo* review of the record made by the ALJ and does not conduct another hearing. All submissions to and materials issued by the EAB are written.

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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