

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0378

Affirmed
Ineligible Weeks 51-15 to 52-15

PROCEDURAL HISTORY: On February 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from December 20, 2015 to January 2, 2016 (decision # 134352). Claimant filed a timely request for hearing. On March 17, 2016, ALJ Hall conducted a hearing and issued Hearing Decision 16-UI-55236, affirming the Department's decision. On April 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Although EAB considered claimant's entire written argument when reaching this decision, we will address only her primary arguments in this decision. Claimant argued that, when claiming benefits, she was faced with a conundrum: to receive benefits, she either needed to report an "exact" return to work date to the Department to qualify for the temporary layoff exception, which would have been "guessing," or she needed to actively seek work with another employer, when she had one of the better jobs she qualified for in her area to which she would ultimately want to return. Claimant also argued that the "new and rigid mentality" of the Department regarding work searches defied "common sense" and "seems to be splitting hairs."

Oregon law requires that individuals "actively seek work" as a condition of receiving unemployment insurance benefits. The only applicable exception to that requirement is for individuals who are on a "temporary layoff." The Oregon Administrative Rules define the "temporary layoff" exception to include *only* layoffs of "four weeks or less," in which the individual "had, as of the layoff date, been given a date to return to full-time work." OAR 471-030-0036(5)(b). The claimant handbook claimant included with her written argument stated, in pertinent part, "If you are temporarily laid-off and have a definite date to return to full-time work for your regular employer within four weeks . . . you are actively seeking work if you stay in touch with your employer." Although claimant is correct that the phrase "exact date" does not appear in the laws, rules or handbook, the phrase "definite date" does.

In other words, if, as claimant stated in her argument, her "employer did not have an exact date for full time work but led me to believe it could be any day and not expected to last more than a month," that "neither my employer nor I ever *truly* know when I will work an 8-hour day each day of the week," that

the Department's "return to work date does not allow for this explanation," that claimant did not have a "date to return to full-time work," and that providing a date would have been "guessing," that means the layoff exception to the work search requirement does not apply to claimant's situation, and she was required to actively seek work as a condition of receiving benefits.

Claimant argued that she did not want to leave her regular employer and "was 'scheduled' on a temporary basis to work part time," and was "'on-call' on a temporary basis for reinstatement full time," so if she was "to put a scheduled back to work date on the on-line claim form each time I re-start my claim, it would have been the next day." She argued that it did not make sense for her to seek work with other employers when she did not intend to leave her employment. That might be the case, but seeking work is required as a condition of receiving benefits. Whether claimant was scheduled to work part time, or on-call to work as needed is immaterial – as is the fact that claimant did not want or plan to leave her regular employment during the brief periods of time her employer lacked work for her. She was required as a condition of receiving unemployment insurance benefits while on a layoff *without* a return to work date (a specific, scheduled date upon which the employer notified her it planned to return her to work) to do an active work search consisting of five work seeking activities, two of which must have been direct contact with employers. OAR 471-030-0036(5)(a).

Finally, claimant argued that she felt "accused of fraud when [she] had absolutely no intent of wrong doing." She submitted with her argument a "schedule of adjustments" from the Department listing a \$726 overpayment based on her failure to seek work as required and a "monetary penalty" of \$217.80. The only issue EAB has jurisdiction over is whether claimant actively sought work; we do not have jurisdiction over the overpayment amount or any penalties at this time. For purposes of this work search case, however, the record shows that claimant misunderstood the applicable rules at the time of the weeks at issue and misunderstood how to claim benefits, but does not show "intent of wrong doing."

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-55236 is affirmed.

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

DATE of Service: April 14, 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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