

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0386

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 6, 2015 to December 19, 2015 (decision # 81722). On January 28, 2016, decision # 81722 became final without a request for hearing having been filed. On February 18, 2016, claimant filed a late request for hearing. On February 25, 2016, ALJ Kangas issued Hearing Decision 16-UI-53831, dismissing claimant's hearing request as late, subject to his right to renew the request by responding to an appellant questionnaire by March 10, 2016. On March 1, 2016, the Office of Administrative Hearings (OAH) received claimant's response. On March 10, 2016, OAH mailed claimant a letter canceling Hearing Decision 16-UI-53831. On March 16, 2016, OAH mailed notice of a hearing scheduled for March 28, 2016. On March 28, 2016, ALJ S. Lee conducted a hearing, and on March 31, 2016 issued Hearing Decision 16-UI-56254, allowing claimant's late request for hearing and affirming the Department's decision that claimant did not actively seek work from December 6, 2015 to December 19, 2015. On April 5, 2016, claimant filed an application for review of Hearing Decision 16-UI-56254 with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of Hearing Decision 16-UI-56254 that allowed claimant's late request for hearing. We therefore confined our review to the issue of whether claimant actively sought work during the weeks at issue.

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

FINDINGS OF FACT: (1) On November 29, 2015, claimant filed an initial claim for benefits. He filed weekly claims for the weeks of December 6, 2015 to December 19, 2015 (weeks 49-15 through 50-15), the weeks at issue.

(2) Claimant's customary occupation was truck driver. Claimant's labor market included Mount Shasta, California and surrounding areas. The usual days and hours customary for truck drivers in claimant's labor market included all hours and days.

(3) During the weeks at issue, claimant worked for Siskiyou Trucking, Inc. (STI) as a driver. During each of the weeks at issue, claimant worked three days for STI. STI did not tell claimant he was laid off work or give him a return to work date, but did not have full time work for him due to inclement weather. Claimant was “not told we’re laid off,” “we’re just – we’re off work,” “I knew there was going to be days off,” but “just didn’t know how many days off.” Transcript at 30.

(4) During the week of December 6, 2015 to December 12, 2015, claimant worked part time for STI and used an online job search engine to look for work. He did not apply for any jobs. During the week of December 13, 2015 to December 19, 2015, claimant took a personal day off work one day, worked part time for STI, used an online job search engine, and contacted a business that was outside his labor market, at which he was unwilling to work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work as required.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). The only applicable exception to that requirement is for individuals who are on a temporary layoff from their regular employment. OAR 471-030-0036(5).

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* been given a date to return to full-time work. 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. Claimant said he was off work, but was not laid off work, the length of time claimant was going to be off work was indefinite because it was weather dependent, and claimant was not given an actual date on which the employer expected him to return to work (*e.g.* December 10, 2015). In addition, because the amount of work claimant expected to work in any given week depended on the weather conditions, claimant’s expected return to work was not necessarily for full-time work. For those reasons, claimant cannot have been considered on a temporary layoff, and is 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 inclement weather. 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 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 two work seeking activities, consisting of one direct activity based on his contact with STI, and one other activity based on his online job search. During the week of December 13, to December 19, claimant engaged in three work seeking activities, consisting of two direct activities based on his contact with STI and another business, and one other activity based on his online job search. Claimant did not perform the five activities the

Department requires to constitute an active work search in either week. He was, therefore, not “actively seeking work” as required, and is not eligible to receive unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-56254 is affirmed.

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

DATE of Service: April 13, 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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