

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0482-R

Reconsideration Granted
Appeals Board Decision 2016-EAB-0482 Adhered to on Reconsideration

PROCEDURAL HISTORY: On March 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 132634) concluding that claimant did not actively search for work from February 21 through March 5, 2016 (weeks 8-16 and 9-16). Claimant filed a timely request for hearing. On April 11, 2016, ALJ Micheletti conducted a hearing, and on April 13, 2016, issued Hearing Decision 16-UI-57199, affirming the administrative decision. On April 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On May 4, 2016, EAB issued Appeals Board Decision 2016-EAB-0482 in which it affirmed the hearing decision under review. On May 6, 2016, EAB received claimant's written argument. EAB will exercise its authority under ORS 657.290(3) to reconsider Appeals Board Decision 2016-EAB-0482 and address one of the issues raised in claimant's written argument.

CONCLUSION AND REASONS: Claimant's request for reconsideration is granted. We adhere to Appeals Board Decision 2016-EAB-0482.

In Appeals Board Decision 2016-EAB-0482, we affirmed the ALJ's conclusion that claimant failed to actively search for work from February 21 through March 5, 2016 (weeks 8-16 and 9-16). The ALJ's conclusion was based on a finding that during the period at issue, claimant performed no work search activities other than remaining in touch with his regular employer. We agreed with the ALJ's reasoning that because claimant had not been temporarily laid off by his regular employer with a return to work date, he was required to conduct five work seeking activities per week under OAR 471-030-003(5)(a) and (b) (February 23, 2014).

In his written argument, claimant asserted that he was an on call supervisor for his regular employer during week 8-16, and worked one day for the employer during week 9-16. Claimant contended that he did not look for work during these two weeks because to do so would have jeopardized his position with the employer. Claimant admitted, however, that the employer did not give him a definite return to work date when it laid him off, asserting that "[a]t no time was he led to believe that the company would not provide him fulltime work in the future." Written Argument at 1.

The rule concerning temporary layoff status is clear, however. An individual is considered to have been temporarily laid off by a regular employer, and is not required to perform five work seeking activities per week, only 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.” OAR 471-030-0036((5)(b)(A). Under that rule, it does not matter if the employer laid claimant off work, or if the layoff was four weeks or less, or even if claimant was certain that he would return to work at some point for his regular employer. Because claimant's regular employer gave claimant no date by which he would be expected to return to full time work, claimant was not exempt from the requirement that he perform five work seeking activities each week during the weeks at issue. As a result, we find EAB made no error of fact or law in affirming the ALJ’s conclusion that claimant failed to actively search for work during weeks 8-16 and 9-16. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision “to the extent necessary and appropriate for the correction of a previous error of fact or law.”)

DECISION: Reconsideration is granted. Employment Appeals Board Decision 2016-EAB-0482 is adhered to on reconsideration.

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

DATE of Service: May 17, 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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