

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0657**

*Affirmed*  
*Ineligible Weeks 51-15 through 2-16 and 5-16 through 7-16*

**PROCEDURAL HISTORY:** On March 31, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 161806) concluding that claimant failed to actively search for work from December 20, 2015 through January 16, 2016 (weeks 51-15 through 2-16) and January 31 through February 20, 2016 (weeks 5-16 through 7-16). On April 20, 2016, decision # 161806 became final without a request for review having been filed. On April 21, 2016, claimant filed a late request for hearing. On April 27, 2016, ALJ Kangas issued Hearing Decision 16-UI-58320, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by submitting a response to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. By letter dated May 3, 2016, the Office of Administrative Hearings cancelled Hearing Decision 16-UI-58320. On May 23, 2016, ALJ Menegat conducted a hearing and issued Hearing Decision 16-UI-60175 which allowed claimant's late request for hearing and affirmed decision # 161806. On June 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of Hearing Decision 16-UI-58320 concluding claimant had good cause for the late request for hearing. We therefore confined our review to whether claimant was available for work during the weeks at issue, weeks 51-15 through 2-16 and 5-16 through 7-16.

**FINDINGS OF FACT:** (1) Claimant last worked for Integrated Mechanical, Inc., (IMI) a company that contracts to perform maintenance, installation and fabrication of mechanical and piping systems in sawmills and paper mills, on December 18, 2015. IMI told claimant to check with it every Monday to see if it had work available for claimant.

(2) On December 23, 2015, claimant filed an initial claim for unemployment benefits. A weekly benefit amount of \$567 was established. Claimant claimed benefits for weeks 51-15 through 2-16 and weeks 5-16 through 7-16. He was paid benefits for all these weeks with the exception of week 51-15, which was credited to him as his waiting week.

(3) On Monday, January 4, and Monday, January 11, 2016, claimant contacted IMI to ask about work available for him and was told that there was none. Claimant performed no work search activities during weeks 51-15 through 1-16 because he believed he was on temporary layoff and that he was only required to maintain contact with IMI, his regular employer.

(4) During weeks 3-16 and 4-16, claimant looked for work and obtained a job with a company in Texas. Claimant was scheduled to report for work on February 23, 2016.

(4) During weeks 5-16 through 7-16, claimant performed no work search activities. He believed he continued to be on temporary layoff because he was scheduled to begin work with his new employer within four weeks. Audio recording at 31:42.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that the claimant failed to actively search for work during the weeks at issue.

Unless exempt, unemployed individuals must actively seek work during each week claimed to be eligible to receive unemployment insurance benefits. ORS 657.155(1)(c). An individual must do "what an ordinary and reasonable person would do to return to work at the earliest opportunity," including performing "at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." OAR 471-030-0036(5)(a). Individuals who are "on temporary layoff of four weeks or less" from a regular employer may be exempt from having to seek other work, but only "if the individual had, as of the layoff date, been given a date to return to . . . work." OAR 471-030-0036(5)(b)(A). Those individuals are considered to have actively sought work just by maintaining contact with his or her regular employer. *Id*

During weeks 5-15 through 2-16, claimant was laid off from job with IMI. On the date he was laid off, he had not been given a date on which he was expected to return to work, however. Instead, he was told to check with ICI every Monday to see if any work was available for him. Because claimant had not "as of the layoff date, been given a date to return to . . . work," he was not on a temporary layoff from ICI, and was required to search for work. Because claimant failed to search for work during weeks 51-15 through 2-16, he was ineligible to receive waiting week credit or benefits for those weeks.

During weeks 5-16 through 7-16, claimant also did not qualify for the temporary layoff exemption and was required to perform an active work search. The temporary layoff exemption applies only to individual laid off for four weeks or less by a regular employer. During weeks 5-16 through 7-16, claimant was waiting to begin a job with a new employer, not on layoff status from a company that had regularly employed him. Claimant's reluctance to search for a job during the three weeks he was waiting to begin new employment is understandable. However, applicable rules provide only one exemption from the requirement to actively search for work while claiming unemployment benefits, and claimant did not qualify for this exemption during weeks 5-16 through 7-16. Claimant was therefore ineligible to receive unemployment benefits for those weeks.

**DECISION:** Hearing Decision 16-UI-60175 is affirmed.

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

**DATE of Service: July 11, 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](http://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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