

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0706

Modified
Eligible Week 08-16
Ineligible Weeks 09-16 through 12-16

PROCEDURAL HISTORY: On April 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from February 21, 2016 to March 26, 2016 (decision # 73815). Claimant filed a timely request for hearing. On May 23, 2016, ALJ Vincent conducted a hearing, and on May 26, 2016 issued Hearing Decision 16-UI-60521, affirming the Department's decision. On June 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) On February 12, 2016, the employer notified claimant that it did not have full time work for him. The employer told claimant that it hoped to return him to full time work on February 22, 2016, but claimant understood his return to work was dependent upon the employer's business needs, which it could not predict.

(2) On February 22, 2016, the employer notified claimant that his hours were being reduced to "a few hours a week" through March 14, 2016, after which the employer planned to return him to full time work. EAB Exhibit 1.

(3) On February 25, 2016, claimant filed an initial claim for unemployment insurance benefits to supplement his income while he was working drastically reduced hours. The Department informed claimant that he was required to actively seek work while claiming benefits, and was told that an active work search was considered five work seeking activities that included two direct employer contacts.

(4) Each week from February 21, 2016 through March 14, 2016, claimant claimed benefits. He indicated when claiming benefits that his regular employer had laid him off work and he had a definite date to return to full time work within 4 weeks of the date he was laid off. Each of those weeks, claimant maintained contact with his regular employer and performed part time work.

(5) On March 14, 2016, claimant's regular employer notified claimant that it could not return him to full time work until March 21, 2016. Claimant continued to claim benefits through March 26, 2016.

(6) During the week of February 21, 2016 to February 27, 2016, the first week of his initial claim, claimant contacted Metals USA, Blake Miner, a customer service position, and worked for his regular employer on two days.¹ Claimant did not conduct five work seeking activities during any of the remaining weeks at issue.

CONCLUSIONS AND REASONS: We conclude that claimant actively sought work during week 08-16, but did not actively seek work during weeks 09-16 to 12-16.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). "Actively seeking work" generally means doing what an ordinary and reasonable person would do to return to work at the earliest opportunity, specifically, doing five work seeking activities per week, including at least two 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 with the individual's regular employer" may be exempt from seeking work with other employers for a four-week period, but 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," in which case the individual is considered to have actively sought work merely by remaining in contact with the employer, and being capable of accepting and reporting for suitable work opportunities. *See* OAR 471-030-0036(5)(b). An individual who filed an initial claim for benefits and works less than full time for his employer during the first week of his initial claim may count each day worked for the employer as a direct employer contact. OAR 471-030-0036(5)(e)(A).

The ALJ found as fact that claimant did not "make direct contact with two or more employers that he had not previously contacted other than his employer at layoff," and concluded that claimant failed to conduct an active work search as required under the applicable rules during all the weeks at issue. *See* Hearing Decision 16-UI-60521 at 2-3. However, the ALJ did not cite or mention OAR 471-030-0036(5)(e)(A), which provides that individuals working reduced hours during the first week claimed of an initial (or continued) claim may count each day worked as a direct employer contact. Considering that it appears claimant's description of his work search activities during week 08-16 included contact with three employers and two days worked, claimant made five direct employer contacts during week 08-16, and, therefore, must be considered to have actively sought work during that week. He is, therefore, eligible for benefits during that week.

Claimant argued that he was also eligible for benefits during the remaining weeks at issue based on his layoff status during weeks 09-16 to 12-16. The record shows, however, that he was not. Claimant

¹ The information contained in claimant's written argument describing his work search activities and work with the employer during week 08-16 is new information that was relevant and material to this determination, submitting it during the hearing was beyond claimant's reasonable control as a layperson who was not asked to provide the information in that level of detail during the hearing, and it is necessary to complete the record. We therefore admit it into evidence as EAB Exhibit 1 under OAR 471-041-0090. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

testified that he was initially laid off work on February 12, 2016 with a return to work date of February 22, 2016, that on February 22, 2016 he learned that his layoff was going to be extended to March 14, 2016, and that after February 22, 2016 he worked reduced hours for the employer throughout the weeks at issue. Under the layoff exception under OAR 471-030-0036(5)(b), those facts prevent the exception from applying to claimant's situation. First, claimant's layoff began February 12, 2016 and ended February 22, 2016. He was not laid off after February 22, 2016, he was working reduced hours. Individuals working reduced hours for an employer must actively seek work with other employers after the first week of their initial or continued claims. Even if we determined that claimant's layoff did not end on February 22, 2016, he would not qualify for the exemption from the active work search requirement because March 14, 2016, his extended return to work date, was more than 4 weeks after the February 12th layoff date, and the March 14th return to work date was not given to him at the time of his layoff. For those reasons, we conclude that claimant was not exempt from the active work search requirement, and was required to actively seek work during each of those weeks.

Claimant next argued that, even though he believed he was not required to do so, he actively sought work by contacting other employers during weeks 09-16 to 12-16. Although claimant contacted some other employers, the evidence does not support a finding that he conducted five work search activities during any of the weeks at issue. Claimant's argument, the most specific and detailed statement in this record concerning his work search, shows that, other than maintaining contact and working reduced hours for his regular employer, he conducted two work search activities during week 09-16, none during week 10-16, none during week 11-16, and, during week 12-16, conducted one activity and returned to work for his regular employer. *See* EAB Exhibit 1. None of claimant's reported work search activities during weeks 09-16 through 12-16 add up to the five work seeking activities required as a condition of being eligible for benefits. Therefore, we conclude that claimant did not conduct an active work search during those weeks.

In sum, we conclude that claimant is eligible for benefits during week 08-16, and ineligible for benefits during weeks 09-16 through 12-16.

DECISION: Hearing Decision 16-UI-60521 is modified.

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

DATE of Service: July 20, 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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