

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1003**

*Affirmed*  
*Eligible 21-16*  
*Ineligible 22-16*

**PROCEDURAL HISTORY:** On July 1, 2016 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of May 22, 2016 through June 4, 2016 (decision # 114656). Claimant filed a timely request for hearing. On August 2, 2016, ALJ Seideman conducted a hearing, and on August 3, 2016 issued Hearing Decision 16-UI-64912, modifying the Department's decision and concluding claimant actively sought work during the week of May 22, 2016 through May 28, 2016, but did not actively seek work during the week of May 29, 2016 through June 4, 2016. On August 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No party applied for review of that portion of Hearing Decision 16-UI-64912 concluding that claimant actively sought work during the week of May 22 through 28, 2016 (week 21-16). EAB therefore limited its review to whether claimant actively sought work during the week of May 29 through June 4, 2016 (week 22-16). EAB considered claimant's written argument when reaching his decision.

**FINDINGS OF FACT:** (1) Sometime before May 19, 2016, claimant worked as a traffic control flagger. Claimant was sporadically laid off from work when her employer had no jobs available. On May 19, 2016, claimant was laid off due to lack of work. Although claimant expected to return to work within a month, her employer did not give her a date when she would return to work. Claimant's supervisor called her the evening after she was laid off and told claimant "you won't be at home very long." Audio at ~12:07.

(2) After she was laid off, claimant did not immediately restart her unemployment insurance claim because she was waiting to see if her regular employer would call her back to work.

(3) On Thursday, June 2, 2016, claimant called the Department to reopen her unemployment insurance claim. Claimant told the representative with whom she spoke that, although she thought she would return to work very soon, her regular employer had not given her a return to work date. The representative told claimant that she would need to comply with the Department's usual work seeking

requirements since she did not have a return to work date. Sometime on June 3, 2016, claimant's supervisor phoned her and told her she was assigned to a job beginning on June 6, 2016.

(4) On June 10, 2016, claimant claimed benefits for week 22-16. Claimant did not engage in or report any work seeking activities for week 22-16 since her supervisor had informed her on June 3, 2016 that she would return to work on June 6, 2016.

**CONCLUSIONS AND REASONS:** Claimant actively sought work during week 21-16 and is eligible to receive benefits during that week. Claimant did not actively seek work during week 22-16 and is not eligible to receive benefits during that week.

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a) (February 23, 2014). With few exceptions, individuals are "required to conduct 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." *Id.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B). If an individual is on a temporary layoff of four weeks or less with the individual's regular employer and the individual was, as of the layoff date, given a date to return to full-time work, the individual is considered to be actively looking for work by remaining in contact with and being capable of accepting and reporting for any suitable work with the individual's regular employer for a period of up to four calendar weeks. OAR 471-030-0036(5)(b)(A).

Claimant did not dispute she did not engage in the required work seeking activities for week 22-16. Claimant contended that since her regular employer had given her a definite return to work date of June 6, 2016 before she filed her claim for week 22-16, she assumed she did not need to look for work. However, OAR 471-030-0036(5)(b)(A) plainly states that an individual may take advantage of the exception to the usual work seeking requirements based on a temporary layoff only if the individual had, *as of the layoff date*, been given a date to return to work within four weeks of the layoff. Claimant readily admitted she was not given a return to work date at the time she was laid off, but was given the return to work date 17 days after the layoff. While we are sympathetic with claimant's position that were she to have looked for work during week 22-16 (when she knew she would be returning to work on June 6, 2016), no employer would likely have offered her a job since she would have left that job to return to her regular job within a very few days, the language of OAR 471-030-0036(5)(a) and (b) is very clear and we cannot rewrite them or engraft exceptions to their requirements. By her own admission that she did not actively seek work as required by OAR 471-030-0036(5)(a) during week 22-16 and did not fall within the exception set out at OAR 471-030-0036(5)(b), it necessarily follows that claimant did not actively seek work during week 22-16. As such, claimant is not eligible to receive benefits during that week.

**DECISION:** Hearing Decision 16-UI-64912 is affirmed.

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

**DATE of Service: September 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](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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