

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1014

Modified
Ineligible Weeks 21-16 through 23-13

PROCEDURAL HISTORY: On July 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 132241) concluding that claimant did not actively seek work from May 22 through June 11, 2016 (weeks 21-16 through 23-16). Claimant filed a timely request for hearing. On August 4, 2016, ALJ Menegat conducted a hearing, and on August 9, 2016 issued Hearing Decision 16-UI-65210, affirming the Department's decision, and further concluding that claimant also did not actively seek work during the week of May 15 through 21, 2016 (week 20-16). On August 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

JURISDICTIONAL MATTER: In Hearing Decision 16-UI-65210, the ALJ concluded that claimant did not actively seek work during weeks 20-16 through 23-16. However, decision # 132241 did not address whether claimant actively sought work during week 20-16, and the parties did not agree to allow the ALJ to assume jurisdiction over that week. The ALJ therefore erred in assuming jurisdiction over week 20-16, and his conclusion that claimant did not actively seek work during that week is reversed. EAB therefore limited its review to whether claimant actively sought work during weeks 21-16 through 23-16.

FINDINGS OF FACT: (1) Claimant claimed benefits for weeks 21-16 through 23-16, the weeks at issue.

(2) On May 11, 2016, claimant's regular employer notified him that he was being temporarily laid off, effective May 12, 2016, and that the layoff was expected to last four to six weeks.

(3) During weeks 21-16 through 23-16, claimant remained in contact with his employer, but did not conduct any other work seeking activities.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during weeks 21-16 through 23-16.

To be eligible to receive benefits, unemployed individuals must 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). Individuals typically 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.* For an individual on temporary layoff of four weeks or less with the individual's regular employer, 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, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b). The individual does not meet those requirements if the individual had not, 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. *Id.*

Here, as of claimant's layoff date, he had not been given a date to return to work. He therefore was required to conduct at least five work seeking activities per week to be considered actively seeking work. It is undisputed that claimant's only work seeking activity during the weeks at issue was maintaining contact with his regular employer. Claimant therefore did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 16-UI-65210 is modified, as outlined above.

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

DATE of Service: September 26, 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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