

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1023**

*Affirmed - Afirmado*  
*Ineligible – No Elegible*

**PROCEDURAL HISTORY:** On July 8, 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 15 through May 21, 2016 and May 29 through June 11, 2016 (decision # 131952). Claimant filed a timely request for hearing. On August 16, 2016, ALJ Triana conducted a hearing, and on August 18, 2016 issued Hearing Decision 16-UI-65914, affirming the Department's decision. On September 6, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On March 24, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) Sometime before May 13, 2016, claimant was working for Harry & David's. On May 13, 2016, claimant's supervisor told her that worked had slowed down, she would not be working during the week of May 15 through May 21, 2016 (week 20-16), and she should come to work at 7:00 a.m. on May 23, 2016 to learn if there was going to be work for her during the week of May 22 through May 28, 2016 (week 21-16).

(3) Effective week 20-16, claimant restarted her unemployment insurance claim. When claimant restarted her claim, she did not have a definite date she was going to return to full-time work for Harry & David's, and did not provide one to the Department. Claimant did not work during week 20-16. Claimant claimed benefits for week 20-16, and when she made her weekly claim report she reported that her only work seeking activities involved maintaining contact with Harry & David's.

(4) Claimant did not claim benefits for week May 22 through May 28, 2016 (week 21-16). Effective week 22-16, claimant restarted her claim. When claimant restarted her claim, she did not have a definite date when she was going to return to work for Harry & David's full-time and she did not provide one to the Department. Claimant claimed benefits for week 22-16, and when she filed her weekly claim report she reported that she received pay for 16 hours of time, including 8 hours of work and 8 hours holiday

pay for Memorial Day, May 30, 2016. In her claim report for week 22-16, claimant did not report any work seeking activities and stated she was on a temporary layoff from Harry & David's.

(5) For week 23-16, claimant also claimed benefits. When claimant filed her weekly claim report, claimant reported that she worked 8 hours for Harry & David's that week. In her claim report for week 23-16, claimant did not report any work seeking activities and stated she was on a temporary layoff from Harry & David's.

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work during the weeks of May 15 through May 21, 2016 (week 20-16) and the weeks of May 29 through June 11, 2016 (weeks 22-16 and 23-16).

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 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). Individuals who are on a temporary layoff of four weeks or less with their regular employer and who had, *as of the layoff date*, been given a date to return to full time work within four weeks, are considered to have been actively seeking work by remaining in contact with and being capable of accepting and reporting for all suitable work with that employer for up to four calendar weeks following the week in which the temporary layoff occurred. OAR 471-030-0036(5) (emphasis added). During the first week of an initial or additional claim, an individual is considered to have made one direct employer contact each day that the individual worked for the individual's regular employer. OAR 471-030-0036(5)(e). An additional claim is a claimant's certification that restarts a claim and certifies that there was no employment in any week since last reporting on that claim. OAR 471-030-0040(1)(c) (February 23, 2014).

Claimant did not dispute that she did not look for work beyond maintaining contact with Harry & David's during weeks 20-16, 22-16 and 23-16. Transcript at 16. Claimant also did not dispute that when she restarted her claim she did not provide information in response to the Department's questions about whether Harry & David's had given her a specific return to work date. Transcript at 13. Although claimant's testimony was at time vague, it appeared that when claimant's supervisor told her that the employer's work had slowed down and she would not be working during week 20-16, the supervisor requested that employees show up at work on Monday during weeks 21-16, 22-16 and 23-16 to learn if there was going to be any work for them in those weeks and, if so, how much. Transcript at 10, 12, 13. Such a conditional statement by the supervisor cannot be construed as a definite date when claimant would return to full time work. As such, because claimant was not on a temporary layoff as defined under OAR 471-030-0036(5), she was required to engage in five work seeking activities during weeks 20-16, 22-16 and 23-16. Claimant admitted she did not perform the required number of work seeking activities during those weeks. Although claimant did perform one day of work for Harry & David's during week 22-16, a week in which she restarted her claim, that work would count as only as one work seeking activity, requiring her to perform at least four other work seeking activities during that week. Claimant did not perform the other four activities needed to actively seek work in week 22-16.

Claimant was not on a temporary layoff as defined in OAR 471-030-0036(5) during weeks 20-16, 22-16 and 23-16, and she did not perform five work seeking activities during those weeks. Accordingly, claimant did not actively seek work during weeks 20-16, 22-16 and 23-16, and is not eligible to receive benefits during those weeks.

**DECISION:** Hearing Decision 16-UI-65914 is affirmed. *Decisión de la Audiencia 16-UI-65914 queda confirmada.*

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

**DATE of Service: October 7, 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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**NOTA:** *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

**Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.