

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1051**

*Affirmed*  
*Ineligible Weeks 17-16 through 19-16*

**PROCEDURAL HISTORY:** On June 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 150905) concluding that claimant did not actively search for work from April 24 through May 14, 2016 (weeks 17-16 through 19-16). On June 22, 2016, decision # 150905 became final without a request for hearing having been filed. On July 11, 2016, claimant filed a late request for hearing. On July 14, 2016, ALJ Kangas issued Hearing Decision 16-UI-63765, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the hearing request by responding to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. By letter dated July 27, 2016, the Office of Administrative Hearings cancelled Hearing Decision 16-UI-67765. On August 22, 2016, ALJ Seideman conducted a hearing, and on August 23, 2016, issued Hearing Decision 16-66168, allowing claimant's late hearing request and affirming decision # 150905. On September 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party appealed the portion of Hearing Decision 16-UI-66168 allowing claimant's late request for hearing. We therefore limit our review to whether claimant actively searched for work during the weeks at issue.

**FINDINGS OF FACT:** (1) On April 20, 2016, claimant's employer told him that it had no work for him and would have no work for an indefinite period of time; the employer said claimant might be laid off for a few days or a few weeks. Audio recording at 29:23.

(2) Also on April 20, 2016, claimant filed an initial claim for unemployment benefits online. To complete his claim filing, claimant was required to read an advisory that specified that he must immediately begin an active work search if he had been laid off and if, on the date he was laid off, the employer gave him no definite return to work date within four weeks of the date of layoff. The advisory defined an active work search as one consisting of at least five work seeking activities per week, with at least two of the activities being direct contact with an employer who might hire claimant.

(3) Claimant filed weekly claims for unemployment benefits for weeks 17-16 through 19-16 (April 24 through May 14, 2016), the weeks at issue. Each week that he filed his claims, claimant indicated that he was temporarily laid off by his employer, but had been given no specific date on which he expected to return to work. Other than remaining in contact with his employer, claimant performed no work seeking activities during the weeks at issue.

(4) On May 2, 2016, claimant met with a Department representative to complete a “Welcome” process. During this meeting, claimant received a written copy of the work search requirements with which he was expected to comply. Audio recording at 27:33.

**CONCLUSION AND REASONS:** Claimant did not actively search for work during weeks 17-16 through 19-16. Claimant is ineligible to receive unemployment benefits for those weeks.

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). An exception to the general requirement of “actively seeking work” exists if an individual was laid off and, as of the date of the layoff, given a return to work date of four weeks or less from the date of the layoff. OAR 471-030-0036(5)(b)A)-(B). For such individuals, the individual is considered to have actively sought work if he remains in contact with his employer and is capable of accepting and reporting for any suitable work with the employer during the first four weeks after the layoff. OAR 471-030-0036(5)(b)(A).

At hearing, it was undisputed that on April 20, 2016, the date on which claimant was laid off, claimant’s employer gave him no definite date on which it expected claimant would return to work. Claimant therefore did not fall within an exception to the general work seeking requirements of OAR 471-030-0036(5)(a). Claimant’s justification for his failure to seek work according to those requirements was that during a May 2, 2016 meeting with a Department representative, the representative advised him that he did not need to actively seek work during the first four weeks of his layoff and only needed to seek work if and when his layoff exceeded this four week period. Audio recording at 32:37. Claimant appears to be invoking the doctrine of estoppel, asserting that based on the statements of the Department representative, the Department was precluded from requiring he perform an active work search. The doctrine of equitable estoppel “requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it.” *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party “must have relied on the agency’s representations and the party’s reliance must have been reasonable.” *State ex rel SOSOC v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

At hearing, the Department's witness testified that claimant was advised in writing when he filed his claim online on April 20 and again at the May 2 meeting with the Department representative on May 2, that he needed to immediately begin an active work search if, on the date he was laid off, he was given no definite return to work date. Assuming that the Department representative told claimant he need not search for work for four weeks, claimant would have been expected to acknowledge the discrepancy between the representative's advice and the Department's written advisements and contact the Department to resolve the contradiction in the information he had received. Claimant did not do so, however. Claimant's reliance on an oral statement that contradicted the Department's formal written advisements was not reasonable. The doctrine of estoppel therefore does not apply to preclude the Department from requiring that he search for work during the weeks at issue.

Claimant did not actively seek work during the weeks at issue. Claimant was ineligible to receive benefits for those weeks.

**DECISION:** Hearing Decision 16-UI-66168 is affirmed.

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

**DATE of Service: October 5, 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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