

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1079**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On July 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 140138) concluding claimant did not actively seek work during the weeks of June 5, 2016 through July 2, 2016 (weeks 23-16 through 26-16). Claimant filed a timely request for hearing. On August 18, 2016, ALJ Frank conducted a hearing, and on August 26, 2016 issued Hearing Decision 16-UI-66413, affirming the Department's decision. On September 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Sometime before April 16, 2015, claimant was working full-time for the Waldorf School of Bend. April 16, 2015 was the last day that claimant worked full time for the Waldorf School. Sometime after, claimant filed a claim for benefits and reported that he was going to return to full-time work for the Waldorf School on January 6, 2016. After April 16, 2015, claimant periodically worked part-time for the Waldorf School, reported his part-time earnings and claimed benefits for some weeks.

(2) Claimant reopened his unemployment insurance claim, effective the week of October 11 through 17, 2015 (week 41-15). Thereafter, claimant continuously claimed benefits while reporting any earnings from part-time work for the Waldorf School. On January 5, 2016, claimant filed another claim to enable him to continue receiving benefits. At that time, claimant was advised that to receive benefits for any week, he needed to conduct five work seeking activities in that week. Claimant continued to file weekly claims and to report part-time earnings from the Waldorf School through the week of May 29 through June 4, 2016 (week 22-16). Sometime during week 23-16, claimant learned that he was going to be returning to full time work at the Waldorf School, and he would begin receiving full time pay on July 1, 2016 (in week 26-16).

(3) Claimant claimed benefits for weeks from June 5 through July 2, 2016 (weeks 23-16 through 26-16), the weeks at issue. During benefit weeks 23-16 and 24-16, claimant reported part-time earnings from

the Waldorf School. Claimant did not report any earnings from the Waldorf School during weeks 25-16 and 26-16. In the weekly claims reports that claimant filed for the weeks at issue, he stated he was on a temporary layoff from the Waldorf School. For the weeks at issue, claimant conducted no work seeking activities other than maintaining contact with the Waldorf School.

(4) On July 1, 2016 (in week 26-16), although claimant began accruing a monthly proration of pay from the Waldorf School for his anticipated full-time work for school year 2016-2017, he did not actually begin performing work. Claimant took an out-of-town vacation from July 7, 2016 until approximately July 28, 2016 (weeks 27-16 through 30-16).

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant did not actively seek work during weeks 23-16 through 26-16. Claimant is not eligible to receive 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 limited 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). However, an individual who is on a temporary layoff of four weeks or less with the individual's regular employer and who has *as of the layoff date*, been given a date to return to *full-time work* that is four weeks or less from the date of the temporary layoff is considered to be actively seeking work by remaining in contact with and being capable or accepting and reporting for any suitable work with the regular employer for up to four calendar weeks following the end of the week in which the layoff occurred. OAR 471-030-0036(5)(b) (emphasis added).

Claimant did not dispute that he conducted no work seeking activities other than remaining in contact with the Waldorf School during weeks 23-16 through 26-16 since he thought he was subject to the exception to the work seeking requirements applicable to individuals on a temporary layoff. Audio at ~15:00; Exhibit 1 at 3. It appears that claimant believed he did not need to actively seek work for the four weeks preceding the date he would be returning to the Waldorf's School's pay schedule for purposes of receiving a proration of full-time pay, regardless of when he learned of this return to work date. In other words, although he was already on a layoff from full-time employment with the Waldorf School when he learned that he would return to the full time pay schedule at the Waldorf School effective July 1, 2016 (the latter part of week 26-16), claimant thought he was not required to look for work during that week and the three weeks that preceded it, weeks 23-16 through 25-16. However, claimant's layoff date from *full-time* work with the Waldorf School was as of April 16, 2015, more than a year before week 23-16, the week in which claimant learned that he would be placed back on the payroll effective July 1, 2016. The date that claimant returned to the full-time payroll was far longer than four weeks from the date of his layoff, and he was therefore not subject to the more lenient work seeking requirements for individuals on a temporary layoff. As well, claimant was not going to return to work on July 1, 2016, but would only be placed back on the payroll effective as of that date for purposes of receiving a monthly proration full-time pay that was attributable to work he would perform after the

school year had commenced. That claimant might receive a proration of full time pay for work he would perform in the future is not tantamount to actually returning to and performing full-time work for the Waldorf School. For these reasons, on the facts in this record, the more lenient work seeking requirements for individuals on a temporary layoff also are not applicable to claimant.

The exception to the general work seeking requirements set out at OAR 471-030-0036(5)(b) does not govern claimant's work searches during weeks 23-16 through 26-16. Since no other exceptions are applicable, claimant was subject to the general work seeking requirements of OAR 471-030-00386(5)(a). Accordingly, by not conducting any work seeking activities other than maintaining contact with the Waldorf School during weeks 23-16 through 26-16, claimant failed to actively seek work during those weeks. Claimant is not eligible to receive unemployment benefits during the weeks at issue.

**DECISION:** Hearing Decision 16-UI-66413 is affirmed.

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

**DATE of Service: October 17, 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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