

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1127

Hearing Decision 16-UI-68403 Affirmed
Ineligible
Hearing Decision 16-UI-68399 Affirmed
Ineligible

PROCEDURAL HISTORY: On September 1, 2016, the Oregon Employment Department (the Department) served notices of two administrative decisions, the first concluding that claimant did not actively seek work during the weeks of June 12, 2016 through July 2, 2016 (decision # 143940), and the second concluding that claimant did not actively seek work during the weeks of July 10, 2016 through August 13, 2016 (decision # 145744). Claimant filed timely requests for hearings on both administrative decisions. On September 30, 2016, ALJ M. Davis conducted a consolidated hearing, and on September 30, 2016 issued two hearing decisions, the first concluding that claimant did not actively seek work during the weeks of June 12, 2016 through July 2, 2016 (Hearing Decision 16-UI-68403) and the second concluding that claimant did not actively seek work during the weeks of July 10, 2016 through August 13, 2016 (Hearing Decision 16-UI-68399). On October 5, 2016, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Claimant submitted a written argument on her application for review to EAB. EAB considered claimant's argument and the entire hearing record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-68403 and 16-UI-68399. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1128 and 2016-EAB-1127).

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits on July 9, 2015. Claimant worked as a school bus driver for the employer, First Student, during 2016. On June 14, 2016, First Student laid claimant off from full time work and told claimant she would work a part time summer school schedule until she returned to her regular school year schedule on August 15, 2016.

(2) Claimant claimed unemployment benefits for the weeks of June 12, 2016 through July 2, 2016 (weeks 24-16 through 26-16). When claimant claimed benefits for weeks 24-16 through 26-16, she

reported that she was on a temporary layoff, and that her only work search activity was to remain in contact with First Student. The Department paid claimant benefits for those weeks.

(3) On June 21, 2016, claimant began working part time for First Student. Claimant filed a second claim for benefits on July 10, 2016. Claimant claimed benefits for the weeks of July 10, 2016 through September 3, 2016 (weeks 28-16 through 35-16). When claimant claimed benefits for weeks 28-16 through 34-16, she reported that she was on a temporary layoff, and that her only work search activity was to remain in contact with First Student. The Department paid claimant benefits for weeks 28-16 through 34-16.

(4) On July 27, 2016, the Department sent claimant two letters informing her that she failed to report work searches for the weeks she had claimed up to that point. One of the letters pertained to weeks 24-16 through 26-16 of claimant's first claim for benefits. Claimant did not respond to the letter. The second letter pertained to the week of 28-16 and subsequent weeks claimed. Claimant wrote in response to that letter, "I did everything I was supposed to do," and did not provide additional work search information in response to the letters. Transcript at 8.

(5) On September 1, 2016, a Department representative called claimant and explained to claimant that she was not considered to be on a temporary layoff and that the Department expected her to engage in work searches to qualify for benefits. Claimant told the representative that she did not seek work other than with First Student during weeks 24-16 through 26-16 and 28-16 through 34-16. Claimant was not a member of a closed union.

(6) During week 35-16, claimant engaged in four work search activities. Claimant reported to the Department that she contacted First Student and three other employers. The Department denied and did not pay claimant benefits for week 35-16.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work from June 12, 2016 through July 2, 2016 and from July 10, 2016 through September 3, 2016.

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).

It appears that claimant believed she did not need to actively seek work for the weeks at issue because she continued to have intermittent work with First Student during those weeks and would return to her regular work schedule in August. The exceptions to the general work seeking requirements set out in OAR 471-030-0036(5) do not apply to claimant's work searches. The exception provided for a claimant on a temporary layoff does not apply to claimant's work searches because First Student did not give claimant on June 14, 2016 a date to return to full-time work that was four weeks or less from the date of the temporary layoff. OAR 471-030-0036(5)(b).

Except for the final week claimed, week 35-16, claimant provided no evidence until the hearing that she engaged in any work search activities during the weeks at issue other than remaining in contact with First Student. When claimant claimed each week, she did not list work search activities other than contacting First Student, and indicated for each week from 24-16 through 26-16 and 28-16 through 34-16 that she was on a temporary layoff from work. When the Department sent claimant two letters requesting additional work search information for the weeks at issue, claimant returned one letter stating only that she "did everything that [she] was supposed to do," and did not provide additional work search information. When claimant spoke with a Department representative on September 1, 2016 about her work search during the weeks from 24-16 through 26-16 and 28-16 through 34-16, claimant told the representative that she did not look for work other than to remain in contact with First Student. However, at hearing, claimant provided contradictory testimony. Claimant asserted that she did engage in other work search activity, and kept records of it. Transcript at 18-19, *see also* Exhibit 1 at 3-5. However, claimant contradicted herself when she also testified at hearing that she did not report the work search activities to the Department because she was returning to work with First Student in four weeks and "just kept in contact with First Student." Transcript at 20. Although claimant provided work search information for week 35-16 showing she engaged in four work search activities, four activities falls short of the five work seeking activities per week necessary for a claimant to show she was actively seeking work.

In sum, the preponderance of the evidence shows that claimant did not conduct five work search activities, including two new employer contacts, for the weeks from June 12, 2016 through July 2, 2016 and from July 10, 2016 through September 3, 2016. Thus, claimant did not actively seek work during all the weeks at issue (24-16 through 26-16 and 28-16 through 35-16).

DECISION: Hearing Decision 16-UI-68403 and 16-UI-68399 are affirmed.

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

DATE of Service: October 31, 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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