

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1152

Affirmed
Ineligible Weeks 24-16 through 26-16 and 28-16 through 30-16

PROCEDURAL HISTORY: On August 4, 2016, the Oregon Employment Department (the Department) served notice of administrative decision # 104038, concluding that claimant did not actively search for work from June 12 through July 16, 2016 (weeks 24-16 through 28-16), and decision # 105517, concluding that claimant did not actively search for work from July 17 through July 30, 2016 (weeks 29-16 and 30-16). Claimant filed timely requests for hearing. On September 22, 2016, ALJ Wyatt conducted a consolidated hearing, and on September 23, 2016, issued Hearing Decision 16-UI-67996, concluding that claimant did not actively search for work during weeks 24-16 through 26-16 and week 28-16, and Hearing Decision 16-UI-68005, concluding that claimant did not actively search for work during weeks 29-16 and 30-16. On October 13, 2016, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-67996 and 16-UI-68005. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1152 and 2016-EAB-1153).

FINDINGS OF FACT: (1) On July 24, 2015, claimant filed an initial claim for unemployment benefits. (The Department designated this claim as Benefit Year Ending (BYE) 28-16). On June 15, 2016, claimant restarted her claim, and a weekly benefit amount of \$299 was established. On the date that she restarted her claim, a Department representative advised claimant that for each of the weeks for which she was claiming benefits, she was required to conduct an active work search, consisting of five work seeking activities per week, at least two of those being direct contact with an employer who might hire the individual. Claimant claimed benefits under her BYE 28-16 claim for weeks 24-16 through 26-16, and 28-16.

(2) During the 2015-2016 school year, claimant drove a school bus for First Student. After the school year ended, claimant worked the following part time hours for First Student: 3 hours during week 24-16 (June 12 through 18); 13 hours during week 25-16 (June 19 through 25); 14 hours during week 26-16 (June 26 through July 2); and 11 hours during week 28-16 (July 10 through 16). Claimant's part time work for First Student ended on July 13. During weeks 24-16 through 26-16 and week 28-16, claimant

performed no work seeking activities, other than contacting First Student to ask about additional work that might be available for her.

(3) On July 19, 2016, claimant filed a second initial claim for benefits (BYE 28-17). A weekly benefit amount of \$149 was established. On the date she filed her BYE 28-17 claim, a Department representative again advised claimant that for each week for which she claimed benefits, she was required to conduct an active work search consisting of five work seeking activities, at least two of those being direct contact with an employer who might hire her. Claimant claimed benefits under her BYE 28-17 claim for weeks 29-16 and 30-16.

(4) During week 29-16 (July 17 through 23, 2016) claimant contacted First Student in Canby, Gladstone and Molalla to ask about any available work.

(5) During week 30-16 (July 24 through 30, 2016) claimant contacted First Student in Canby and Gladstone, and Student Transportation of America, a company that replaced First Student as the provider of bus service to the school district where claimant had previously worked. On July 25, 2016 Student Transportation of America hired claimant as a bus driver, and claimant worked 8 hours for her new employer during week 30-16.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant did not actively search for work during weeks 24-16 through 26-16, and 28-16 through 30-16.

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.” 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.*

During weeks 24-16 through 26-16 and 28-16 through 30-16, the weeks at issue, the record shows that claimant did not comply with these work search requirements, and failed to conduct at least five work seeking activities for each of the weeks for which she claimed benefits. Although claimant might have believed that she was temporarily laid off after her part time work for First Student ended on July 13, she was given no definite return to work at that time. As a result, she was not considered to be on a temporary layoff under OAR 471-030-0036(5)(b) and therefore not exempt from the work search requirements under that rule.

Claimant also asserted that she did not conduct an active work search because in the past, she had filed claims for unemployment benefits and not indicated that she was conducting an active work search; according to claimant, “she had been doing it the same since at least 2013.” Audio recording at 36:17. The record shows, however, that on July 24, 2015, when she filed her BYE 28-16 claim, and again on July 19, 2016, when she filed her BYE 28-17 claim, a Department representative advised her of the work search requirements with which she was expected to comply. We therefore conclude that claimant failed to actively search for work during the weeks at issue, and is ineligible to receive benefits for weeks 24-16 through 26-16, and 28-16 through 30-16.

DECISION: Hearing Decisions 16-UI-67996 and 16-UI-68005 are affirmed.

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

DATE of Service: October 28, 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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