

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1172

Hearing Decision 16-UI-68554 Affirmed
Ineligible
Hearing Decision 16-UI-68660 Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On July 19, 2016 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of June 12, 2016 through July 2, 2016 (decision # 124726). Claimant did not file a timely request for hearing on or before August 18, 2016. On August 31, 2016, the Department issued notice of a second administrative decision assessing an overpayment based on decision # 124761 (decision # 160400). On September 6, 2016, claimant filed an untimely request for hearing on administrative decision # 124726 and a timely request for hearing on administrative decision # 160400. On October 3, 2016, ALJ Murdock conducted two hearings and on October 4, 2016 issued Hearing Decision 16-UI-68554, allowing claimant's late request for hearing and affirming decision # 124726, and on October 5, 2016 issued Hearing Decision 16-UI-68660, affirming decision # 160400. On October 17, 2016, claimant filed applications for review of both administrative decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-68554 and 16-UI-68660. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1172 and 16-EAB-1173).

Since no adversely affected party sought review of that portion of Hearing Decision 16-UI-68554 allowing claimant's late request for hearing, EAB has confined its review of Hearing Decision 16-UI-68554 to the issue of whether claimant actively sought work.

FINDINGS OF FACT: (1) Before May 18, 2016, claimant was working full time for his regular employer. On May 18, 2016 (in week 20-24), claimant's regular employer informed him that it was not going to have full time work for him for some period of time and he was temporarily laid off. Claimant thought he would return to full time work for his regular employer within four weeks of his layoff.

(2) On May 30, 2016, claimant reopened his unemployment insurance claim with the Department. When claimant reopened his claim, he notified the Department that he would return to full-time work on June 11, 2016. Claimant's reopening of his claim was determined valid, with a weekly benefit amount of \$432. When claimant reopened his claim, he was advised that if he had a definite return to work date that was within four weeks of the date he was laid off from full-time work, he would satisfy the Department's work seeking requirements by maintaining contact with his regular employer. The advisement further notified claimant that if his return to full-time work was delayed, he needed to immediately notify the Department's call center and begin looking other work immediately. Audio at ~13:46.

(3) On June 11, 2016, claimant did not return to full-time work with his regular employer because the employer had lost an expected project. At that time, claimant's employer did not give him a specific date when he was going to return to full-time work, but claimant expected it would be within at least four weeks from June 11, 2016.

(4) During the week of June 12 through 16, 2016 (week 24-16), claimant worked 18 hours for his regular employer and earned \$414. Claimant claimed benefits for week 24-14, reported his earnings and was paid \$162 in benefits. Claimant certified that he was on a temporary layoff during that week, did not report any work seeking activities and did not give the Department a new date when would return to full-time work. Claimant also claimed benefits for the weeks of June 19, 2016 through July 2, 2016 (weeks 25-16 and 26-16). Claimant did not work for his regular employer or any other employer during those weeks and did not report any earnings for them. For weeks 25-16 and 26-16, claimant also certified he was on a temporary layoff, did not report any work seeking activities and did not give the Department a date when he would return to full time work. Claimant was paid \$432 in benefits for week 25-16 and \$432 in benefits for week 26-16. In total, claimant was paid \$1,026 in benefits for weeks 24-16 through 26-16.

(5) During week 27-16, claimant returned to full-time work with his regular employer and did not claim benefits for that week or thereafter.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during weeks 24-16 through 26-16, and was not eligible to receive benefits during those weeks. Claimant was overpaid \$1,026 for weeks 24-16 through 26-16 and he is liable to repay those benefits or have them deducted from any future benefits otherwise payable to him.

Actively Seeking Work. 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). However, an individual who is on a temporary layoff of four weeks or less with the individual's regular employer and who, as of the layoff date, was given a return to return to full time work within four weeks, is considered to have actively sought 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. An individual no longer meets the requirements of this exception if four calendar weeks have passed following the week in which the layoff occurred and the individual is required to seek work consistent with OAR 471-030-0036(5)(a) in addition to with the individual's regular employer.

Claimant ultimately testified at hearing that the employer did not tell him on or before May 18, 2016, the date of his layoff, "exactly" when he was going to return to full-time work, or specifically state he was going to return on June 11, 2016. Audio of 2:30 p.m. Hearing at ~19:27, ~19:49, ~20:12. Rather claimant admitted he initially assumed he was going to return to full time work by June 11, 2016 and, when he did not, he assumed that he would be returning to full-time work at least within four weeks after June 11, 2016. However, the exception to the general work seeking requirements of OAR 471-030-0036(5)(a) for individuals on a temporary layoff is very narrow and requires that the individual have been given a specific date to return to full time work on or before the date of his layoff. Since claimant was not given a specific return to work date, he did not fall within that exception even though he told the Department he was going to return to full time work on June 11, 2016 and, since no other exceptions apply to his situation, he was required to perform five work seeking activities each week that he claimed benefits. Because claimant did not dispute that he did not conduct five work seeking activities during each of the weeks 24-16 through 26-16, he was not eligible to receive benefits during those weeks.

Overpayment. An unemployed individual who does not actively seek work during a week is not eligible to receive benefits for that week. ORS 657.155(1)(c). An individual who receives benefits to which the individual is not entitled because the individual, regardless of the individual's knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, is liable to repay those benefits or to have the amount of those benefits deducted from any future benefits otherwise payable to the individual. ORS 657.310(1).

Here, claimant was paid a total of \$1,026 in benefits during weeks 24-16 through 26-16 based on his certifications that he was unemployed due to a temporary layoff, and therefore was exempt from the usual work seeking requirements of OAR 471-030-0036(5)(a). Audio of 3:30 p.m. Hearing at ~5:07. Even if claimant did not know the layoff he was on did not allow him to take advantage of the more lenient work seeking requirements of OAR 471-030-0036(5)(b), and believed he fell within the exception for temporary layoffs, he is still required to repay the \$1,026 in benefits which he received and to which he was not entitled.

DECISION: Hearing Decisions 16-UI-68544 and 16-UI-68660 are affirmed.

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

DATE of Service: November 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. 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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