

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1184

Reversed
Eligible Weeks 30-16 and 31-16

PROCEDURAL HISTORY: On August 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 24, 2016 to August 6, 2016 (decision # 121515). Claimant filed a timely request for hearing. On October 4, 2016, ALJ S. Lee conducted a hearing, and on October 5, 2016 issued Hearing Decision 16-UI-68638, affirming the Department's decision. On October 21, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) On August 9, 2015, claimant filed an initial claim for unemployment insurance benefits.

(2) After working on Friday, July 22, 2016 for her employer of 21 years, the employer notified claimant that she was going to be laid off work. As such, the employer expected claimant not to return to the workplace on Monday, July 25, 2016 for her next regularly scheduled shift. The employer notified claimant that she was scheduled to return to full-time work on Monday, August 22, 2016. The employer also told claimant that she might be returned for some work earlier if the employer had increased business before August 22.

(3) On July 26, 2016, claimant reopened her unemployment insurance claim. Claimant subsequently filed weekly claims for benefits for the weeks of July 24, 2016 through August 6, 2016 (weeks 30-16 and 31-16), the weeks at issue. Claimant remained in contact with her regular employer during those two weeks but did not conduct any additional work seeking activities. The Department paid claimant benefits for both of the weeks at issue.

(4) The employer ended claimant's layoff on August 18, 2016 by returning claimant to part-time work.

CONCLUSIONS AND REASONS: We disagree with the ALJ and concluded that claimant is eligible for benefits for weeks 30-16 and 31-16.

To be considered eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). Generally speaking, the Department requires individuals to actively seek work by conducting "at least five work seeking activities per week." OAR 471-030-0036(5)(a). A claimant who is temporarily laid off work by a regular employer, however, may be excused from seeking work if certain conditions are met. OAR 471-030-0036(5)(b). The conditions are: (1) claimant must have been given, as of the "layoff date," a date to return to work; (2) the return to work must be with claimant's regular employer; (3) the return to work date given by claimant's regular employer must be four weeks or less following the week in which the temporary layoff occurred; (4) the return must be to full-time work (or work that pays at least the same as the weekly benefit amount); and (5) claimant must maintain contact with the employer and be capable of accepting and reporting for any suitable work with that employer during the four week period following the layoff. If any of those conditions are not met (*e.g.* if claimant was not given a return to work date, was not expecting to return to her regular employer, the layoff was expected to last more than four weeks, the employer expected the return to work to be for part-time work or work that paid less than claimant's weekly benefit amount, or claimant did not maintain contact or became unwilling or incapable of reporting for suitable work with the employer), or if those conditions changed within the four-week layoff period, claimant must then immediately begin seeking work in order to maintain her qualification for benefits.

The facts of this case are largely undisputed. Claimant worked for a regular employer until notified on July 22nd of a layoff that was expected to end with her return to full-time work on August 22nd. Claimant did not conduct any work seeking activities between July 24, 2016 and August 6, 2016 beyond remaining in contact with her regular employer, and her layoff ended earlier than expected with claimant's return to part-time, sporadic work on August 18th. The only disputes in this case are when claimant's layoff began and whether the layoff period, as planned, was "four weeks or less."

In Hearing Decision 16-UI-68638, the ALJ found as fact that, "[o]n July 22, 2016, the employer laid claimant off..." Hearing Decision 16-UI-68638 at 1. The ALJ reasoned that it was "clear that claimant's return-to-work date [on August 22, 2016] was more than 28 days from the day of the lay-off," and, because the layoff was more than four weeks, claimant was not excused under OAR 471-030-0036(5)(b) from actively seeking work during the two weeks at issue. We disagree.

Neither OAR 471-030-0036(5) nor any other applicable law or rule defines what "the layoff date" is or when it begins for purposes of OAR 471-030-0036(5)(b)(A) and (B). Accordingly, we look to the plain meaning of the words used in the term for guidance. The primary definition of the word "layoff" is "a period of inactivity or idleness."¹ The primary definition of the word "date" is "the time at which an event occurs."² Read together, then, the plain meaning of the term "layoff date" is the time at which the period of inactivity or idleness begins.

In this case, claimant's period of inactivity did not begin on Friday, July 22, 2016. She worked that day. Although she was *notified* of the impending layoff on July 22nd, claimant's layoff did not actually begin

¹ <http://www.merriam-webster.com/dictionary/layoff>

² <http://www.merriam-webster.com/dictionary/date>

until Monday, July 25, 2016, the first regularly scheduled workday upon which claimant was barred from working by the employer, or, put another way, the time at which the period of inactivity began. Because Monday, July 25, 2016 is exactly four calendar weeks before August 22, 2016, the date upon which the employer scheduled claimant to return to full-time work, claimant's layoff was "four weeks or less," and she is not ineligible for benefits because she did not seek work elsewhere during the two weeks at issue.

The fact that the employer indicated it might return claimant to work earlier, if business needs warranted, does not change the outcome of our decision. Claimant's *scheduled* return to work date was still August 22nd, and, as a practical matter, it is always possible that an employer might return an employee to work early if its business needs warrant it, a situation apparently contemplated by the Department's rule, which requires individuals to remain in contact with and be capable of accepting and reporting for any suitable work with the regular employer "for a period of up to four calendar weeks . . .". See OAR 471-030-0036(5)(b). The fact that the employer made that possibility explicit does not alter that claimant had a scheduled return to work date. Nor is it significant for purposes of this decision that the employer returned claimant to work earlier than scheduled, as that occurred outside the weeks at issue and therefore did not affect her benefit eligibility for weeks 30-16 and 31-16.

In sum, as explained above, we conclude that claimant's "layoff date" was July 25, 2016, her scheduled return to full-time work with her regular employer on August 22, 2016 was in "four weeks or less," and, therefore, claimant was not required to perform work seeking activities beyond maintaining contact with her regular employer and being capable of accepting and reporting for work upon request by her regular employer. Having satisfied that and the other requirements listed in OAR 471-030-0036(5)(b), claimant is not ineligible for benefits based on her work seeking activities during weeks 30-16 and 31-16.

DECISION: Hearing Decision 16-UI-68638 is set aside, as outlined above.³

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

DATE of Service: October 27, 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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³ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits if owed may take from several days to two weeks for the Department to complete.