

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1230

Affirmed
Ineligible

PROCEDURAL HISTORY: On August 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of July 17, 2016 through August 13, 2016 (decision # 150150). Claimant filed a timely request for hearing. On October 7, 2016, ALJ Vincent conducted a hearing, and on October 12, 2016 issued Hearing Decision 16-UI-69105, affirming the Department's decision. On November 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted to EAB a letter from his employer, which EAB construes as a request for EAB to consider this information when it reviews this matter. OAR 471-041-0090 (October 29, 2006) allows EAB to consider information not presented at the hearing if it is relevant and material to the issues before EAB and the party offering it shows that factors or circumstances beyond its reasonable control prevented it from presenting that information at the hearing. Claimant testified at hearing about the matters addressed in the employer's letter and the Department's witness did not dispute his testimony. There is no reason to supplement the record by admitting the letter from claimant's employer and it would be duplicative of claimant's un rebutted testimony to do so. EAB denies claimant's request.

FINDINGS OF FACT: (1) On November 24, 2015, claimant filed an initial claim for unemployment benefits

(2) Sometime after November 24, 2016, Bounds Hay Company, LLC hired claimant to work full-time. On Thursday, July 14, 2016, claimant worked for Bounds. On Friday, July 15, 2016, Bounds had a major fire in its hay barn and it was unable to conduct business operations. On Monday, July 18, 2016, claimant called Bounds and spoke to its dispatcher about the effect of the fire on his employment. The dispatcher told claimant she did not know when Bounds would resume business operations and when he would be able to return to work. She told claimant, "You're going to be temporarily laid off until we can figure it out." Audio at ~10:43. The dispatcher asked claimant to stay in contact with the employer.

The dispatcher did not give claimant a specific date when he would return to work because the employer did not know when it could resume operations.

(3) On July 26, 2016, claimant reopened his unemployment insurance claim with the Department. At the time claimant reopened his claim, he stated he was not working due to a temporary layoff and Bounds had given him a return to work of August 15, 2016. When claimant reopened his claim, he was given an advisement stating, "If you are laid off and have a definite date to return to full time work for your employer and your definite date to return to work is within four weeks of when you were laid off, you are actively seeking work if you stay in touch with your employer. If your return to full-time work is delayed, you must call the UI Center and begin seeking other work immediately." Audio at 16:35.

(4) Claimant claimed benefits for the weeks of July 17, 2016 through August 13, 2016 (weeks 29-16 through 32-16), the weeks at issue. When claimant made his weekly claim reports during the weeks at issue, claimant marked a box indicating that he was on a temporary layoff. During the weeks at issue, claimant did not enter any work seeking activities on his weekly claims reports. During each of the weeks at issue, claimant called the employer's dispatcher to learn if the employer knew the date when he would return to work.

(5) On August 12, 2016, the employer's dispatcher told claimant he could return to work on Tuesday, August 16, 2016. Claimant returned to full-time work on that date, and discontinued claiming benefits.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks of July 17, 2016 through August 13, 2016. Claimant was not eligible to receive benefits during 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 very 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 to be considered actively seeking work. *Id.* "However, if an individual is on a temporary layoff or four weeks or less with the individual's regular employer and the individual had, *as of the layoff date, been given a date to return to full time work*, the individual is actively seeking work if the individual remains in contact with and capable of accepting an reporting for any suitable work with that employer for up to found calendar weeks following the end of the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b) (emphasis added).

Claimant testified at hearing that he did not perform any work seeking activities other than remaining in contact with his regular employer because he believed he was on a temporary layoff and was required to do nothing more. Audio at ~11:51. Claimant also testified the employer did not provide him with a return to work when his layoff due to the fire occurred on July 14 or 15, 2016, and did not do so until August 12, 2016. Audio at ~13:50. While claimant may have thought his layoff was "temporary" and would only last as long as it took for his regular employer to organize itself after the fire and resume operations, the definition of what constitutes a "temporary lay" for purposes of allowing a claimant to take advantage of the more lenient work search requirements of OAR 471-030-0036(5)(b) does not contain exceptions or allow us to relax that definition upon a showing of good cause. The plain

language of OAR 471-030-0036(5)(b) required claimant's employer to have given to him a return to work date as of the time of his layoff before its work seeking requirements were applicable to him. Because claimant conceded the employer did not, and he also conceded that he did not comply with the general work seeking requirements of OAR 471-030-0036(5)(a) during the weeks at issue, he was not eligible to receive benefits during those weeks.

Claimant did not actively seek work during the weeks of July 17, 2006 through August 13, 2016. Claimant was not eligible to receive benefits during those weeks.

DECISION: Hearing Decision 16-UI-69105 is affirmed.

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

DATE of Service: November 16, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.