

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1292**

*Affirmed*  
*Ineligible Weeks 29-16 and 30-16*

**PROCEDURAL HISTORY:** On September 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 17, 2016 to July 30, 2016 (decision # 143227). Claimant filed a timely request for hearing. On November 2, 2016, ALJ M. Davis conducted a hearing and issued Hearing Decision 16-UI-70443, affirming the Department's decision. On November 14, 2016 claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review claimant submitted a written argument in which, among other things, he stated he felt like was ignored and "steamrolled throughout the process," and that the ALJ "did not allow me to ask my full question and at the end hung up on me as I was asking a question." We cannot speak to any processes that occurred before the hearing; however, we have reviewed the audio recording from claimant's November 2, 2016 hearing. At the end of the hearing, the following occurred:

ALJ: Mr. . . . um . . . Saintey, do you have anything additional you would like to add that I haven't already heard?

Claimant: Um, no other than, you know, trying to play by the rules that you guys set forth, and here I am.

\* \* \*

ALJ: Alright, then at this point I am going to close the record, it's now 1:43. I will issue a written decision you can expect to receive in the next couple of weeks. Thank you very much for calling in and participating today.

[The sound of a phone receiver being adjusted.]

Claimant: Um...

ALJ: (Nearly simultaneously.) Thank you, goodbye.

[The sound of two conference lines disconnecting.]

Claimant: I . . .

Audio recording at ~ 12:52 *et seq.* Given that claimant told the ALJ that he did not have anything to add, his stated "um" occurred at nearly the exact time the ALJ said "[t]hank you, goodbye," and his

stated "I" appears to have occurred at the moment the ALJ disconnected from the call it is not apparent in the record that the ALJ was aware that claimant was trying to ask a question at the end of the hearing, that the ALJ was ignoring claimant, or that the ALJ "hung up on" claimant with the awareness that he had additional questions. The record therefore does not support a conclusion that the ALJ erred with respect to ending the hearing. We considered claimant's remaining arguments and questions and have addressed each of them, below.

**FINDINGS OF FACT:** (1) On June 1, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant's regular employer was Figure Plant, where he worked as a project manager. The employer experienced a lull in business and temporarily laid claimant off work. His last day of work prior to the weeks at issue was June 28, 2016. The employer notified claimant at the time he was laid off that his scheduled return to work date was July 11, 2016.

(3) Claimant filed weekly claims for benefits. He reported to the Department that he was laid off work and was scheduled to return to work on July 11, 2016. Claimant did not seek work other than maintaining regular contact with his employer.

(4) The employer did not return claimant to work on July 11, 2016 as planned, and instead extended his layoff to August 1, 2016. Claimant reported his changed circumstances to the Department and continued to claim weekly benefits as a laid off worker for the weeks of July 17, 2016 to July 30, 2016, the weeks at issue. Claimant did not seek work other than maintaining regular weekly contact with his employer.

(5) On August 1, 2016, the employer returned claimant to work as scheduled.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant did not actively seek work from July 17, 2016 to July 30, 2016 (weeks 29-16 and 30-16).

ORS 657.155(1)(c) provides that individuals must "actively seek work" as a condition of being eligible to receive unemployment insurance benefits. The Department defines "actively seeking work," generally, as "doing what an ordinary and reasonable person would do to return to work at the earliest opportunity," which is "conduct[ing] at least five work seeking activities per week," unless an exception to that requirement exists. OAR 471-030-0036(5)(a) (February 23, 2014). One of the exceptions to the "actively seeking work" requirement is for individuals "on temporary layoff of four weeks or less with the individual's regular employer." That exception states, in pertinent part,

OAR 471-030-0038(b)

(A) If the individual had, as of the layoff date, been given a date to return to full-time work . . . 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 . . . The individual no longer meets the requirements of this subsection if four calendar weeks have passed following the week in which the temporary layoff occurred, therefore the individual must seek work . . .

(B) The individual does not meet the requirements of this subsection if the individual had not, as of the layoff date, been given a date to return to . . . work . . .

OAR 471-030-0038(c)

For an individual on temporary layoff of more than four weeks with the individual's regular employer: such individual must immediately seek work . . .

The record is clear that claimant was excused from seeking work during the first portion of his layoff; that is, between the effective date of his layoff and the week including July 11, 2016. During that period of time, there is no dispute that claimant was on a layoff of four weeks or less with a definite date to return to work with his regular employer, and maintained sufficient contact with the employer.

After claimant received notice that the employer would not return him from layoff on July 11, 2016 as scheduled, but instead delayed his return to work until August 1, 2016, however, the circumstances changed because claimant's layoff was no longer four weeks or less. The total period of his layoff was extended to and became *more* than four weeks. As noted above, OAR 471-030-0036(5)(c), states that an individual whose layoff becomes more than four weeks is not exempt from seeking work but must immediately begin seeking work with other employers. The Department's "Claimant Handbook" online resource for claimants advises claimants, in pertinent part, that "[i]f your return to full-time work is delayed, you must . . . begin seeking other work."<sup>1</sup> In other words, claimant was not required to seek work with other employers while his layoff was four weeks or less, but the moment that claimant's layoff was extended so that, in total, it was more than four weeks, he was required to begin actively seeking work with other employers.

With respect to the specific questions claimant asked in his written argument, he first asked if his temporary unemployment (June 29 through July 29) amounted to four weeks, or whether that is in dispute. The dates are in dispute. Although EAB would likely consider June 29 (claimant's first day of missed work) his layoff date, others consider the date upon which claimant was notified of the layoff the date of the layoff, which would make the layoff date June 28. Moreover, although claimant characterized his last day of layoff July 29, the record in this matter shows that his actual return to work date was August 1, 2016. Regardless which interpretation is applied, June 28 to August 1 and June 29 to August 1 both amount to more than four calendar weeks.

Claimant next asked why the week of July 17th to July 23rd does not fall into the 4-week period. As we explained above, claimant's layoff period of June 28 or June 29 to July 11 was less than four weeks. When his return to work date was extended to August 1, however, the total layoff period became more than four weeks and claimant no longer qualified for the four-week layoff exception to the "actively seeking work" requirement, and he was not exempt from seeking work during any weeks claimed after his layoff was extended to more than four weeks, including the week of July 17 to July 23.

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<sup>1</sup> See UIPUB 350 (0515). We take notice of this fact, which is contained in Employment Department records and publicly available online at [http://www.oregon.gov/EMPLOY/Unemployment/Claimant\\_Handbook/Pages/default.aspx](http://www.oregon.gov/EMPLOY/Unemployment/Claimant_Handbook/Pages/default.aspx). Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

Claimant next stated that he could see how the last four days of the last week at issue (July 24 to July 30) fell outside the four-week work search exception but did not understand why the first three days did. The reason is that unemployment insurance weeks may not be split in the manner claimant described. Unemployment insurance benefit eligibility determinations are made on a week-by-week basis, and benefit weeks begin on Sundays and end on Saturdays. *See* ORS 657.010(15), ORS 657.100, ORS 657.150; OAR 471-030-0005(1). Benefits are claimed and denied for entire weeks at a time, and there is no provision in Employment Department laws or rules that permit the Department to prorate weeks for any purpose; in fact, the rules specifically provide that benefits may not be allowed for a period of less than seven days. OAR 471-030-0005(1). Therefore, weeks are allowed in total or denied in total, and if there is a reason to deny benefits based on one day of the week the entire week is subject to denial.

Finally, claimant asked whether he should only have claimed half a week of benefits during the last week at issue. As explained above, individuals must claim benefits on a week-by-week basis and may not be allowed benefits for a partial week. Therefore, claimant would not have been permitted to claim half a week of benefits. However, it is important to note that nothing in this decision or the proceedings below should be read to discourage claimant from claiming, or attempting to claim, benefits when unemployed. For purposes of being eligible to *receive* those benefits, however, claimant must, among many other requirements, "actively seek work" with other employers as described herein if his layoff is, or at any time becomes, more than four weeks long.

For the reasons explained, claimant did not "actively seek work" during the weeks of July 17, 2016 through July 30, 2016, and he is therefore ineligible to receive unemployment insurance benefits during those weeks.

**DECISION:** Hearing Decision 16-UI-70443 is affirmed.

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

**DATE of Service:** November 21, 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](http://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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