

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1297

Modified
Ineligible

PROCEDURAL HISTORY: On September 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively search for work during the weeks of June 26, 2016 through July 23, 2016 (decision # 91029). Claimant filed a timely request for hearing. On November 4, 2016, ALJ Holmes-Swanson conducted a hearing, and on November 7, 2016 issued Hearing Decision 16-UI-70664, concluding claimant did not actively search for work during the weeks of June 26, 2016 through August 6, 2016. On November 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sometime around October 2016, Northland Furniture hired claimant for full-time work. When claimant was hired or shortly after, claimant learned that Northland's business often slowed down during the summers and it laid off employees during those summer slow-downs, usually for a couple of weeks.

(2) Sometime before June 23, 2016, claimant learned that Northland's business was slowing down and he likely was going to be laid off. On June 23, 2016, claimant was told there was going to be a "little [work] hiatus" and "don't come to work on Monday [June 27, 2016]." Audio at ~21:58, ~12:32. Claimant thought he was going to be laid off for a couple of weeks but was not given a date he was scheduled to return to work.

(3) On June 26, 2016, claimant filed a claim for unemployment insurance benefits. When claimant filed his claim he reported to the Department that his last day of full-time work was June 23, 2016 and did not provide a date when he expected to return to work. Claimant claimed benefits for the weeks of June 26, 2016 through July 23, 2016 (weeks 26-16 through 29-16), the weeks at issue. During the weeks at issue, claimant reported he was on a temporary layoff, and for work searches during each of the weeks at issue reported only that he was in contact with Northland Furniture. Claimant did not conduct or report any other work search activities during the weeks at issue.

CONCLUSIONS AND REASONS: Claimant did not actively search for work during the weeks of June 26, 2016 through July 23, 2016 and is 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). Individuals are generally "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.* However, individuals who are on a temporary layoff of four weeks or less with the individual's regular employer and who had, *as of the layoff date*, been given a date to return to full-time work are not required to conduct work seeking activities, and are instead considered to be actively seeking work by remaining in contact with and being capable of accepting and reporting for all suitable work with the regular employer for a period of up to four calendar weeks following the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b) (emphasis added).

In Hearing Decision 16-UI-70664, the ALJ adjudicated the adequacy of claimant's work seeking activities for weeks 26-16 through 29-16, which were addressed in administrative decision # 91029 and for which claimant sought review, as well as for weeks 30-16 and 31-16, which were not addressed in the administrative decision. Administrative decision # 91029 was not an ongoing denial of benefits to claimant, there was no administrative decision denying benefits to claimant for weeks 30-16 and 31-16 and the Department allowed benefits to claimant for those weeks. Given the hearing issues as framed by administrative decision # 91029 and on which claimant sought review by requesting a hearing, the ALJ did not have jurisdiction over weeks 30-16 and 31-16, and erred at hearing in expanding the weeks at issue beyond those in administrative decision # 91029. Consequently, EAB does not have jurisdiction over weeks 30-16 and 31-16, and this decision is confined to claimant's work seeking activities for weeks 26-16 through 29-16 only.

With respect to weeks 26-16 through 29-16, claimant did not dispute that he did not conduct five work seeking activities, and stated that he thought it was sufficient if he maintained contact with Northland during those weeks since he believed he would be returning to work in a short period of time. Audio at ~23:00, ~24:32, ~28:28. However, Northland did not give claimant a return to work date as of the time he was laid off or notify him that the duration of his layoff would be four weeks or less. There is, therefore, no evidence in the record that claimant was excused from seeking work during his layoff. By limiting his work seeking activities only to maintaining contact with Northland during the weeks at issue, claimant did not conduct five work seeking activities during each of the weeks at issue as required, and, therefore, did not actively search for work during those weeks. Claimant is not eligible to receive benefits during weeks 26-16 through 29-16.

DECISION: Hearing Decision 16-UI-70664 is modified, as outlined above.

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

DATE of Service: December 14, 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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