

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1355

Reversed
Eligible

PROCEDURAL HISTORY: On October 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of October 2, 2016 through October 15, 2016 (decision # 81133). Claimant filed a timely request for hearing. On November 22, 2016, ALJ Vincent conducted a hearing, and on November 28, 2016 issued Hearing Decision 16-UI-71802, affirming the Department's decision. On December 2, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On November 17, 2015, claimant filed an initial claim for unemployment insurance benefits. Sometime before September 30, 2016, Forest Energy Group hired claimant to work full-time.

(2) On Friday, September 30, 2016, claimant's supervisor for Forest Energy notified him that he was going to be laid off and would be returning to full-time work on October 31, 2016. The first day claimant missed work as a result of this layoff was on Monday, October 3, 2016.

(3) On October 10, 2016, claimant reopened his unemployment insurance claim. At that time, claimant reported to the Department that he had been laid off on September 30, 2016 and expected to return to work on October 31, 2016. Claimant claimed and was paid benefits for the weeks of October 2, 2016 through October 15, 2016 (weeks 40-16 and 41-16), the weeks at issue.

(4) During the weeks at issue, claimant stated that he was on a temporary layoff when he made his weekly claim reports. During the weeks at issue, claimant did not report any work search activities other than maintaining contact with Forest Energy Group, his regular employer

CONCLUSIONS AND REASONS: Claimant actively sought work during weeks 40-16 and 41-16.

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). 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). However, a claimant who is temporarily laid off from work by a regular employer 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 to work 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 not disputed. Claimant worked for his regular employer until he was notified on September 30, 2016 of a layoff that was expected to end with his return to full-time work on October 31, 2016. Claimant did not report any work seeking activities during the weeks at issue beyond remaining in contact with his regular employer. The issue in this case is whether claimant was entitled to take advantage of the exemption from the general work seeking requirements for individuals on a temporary layoff, which involves determining when claimant's layoff began and whether the layoff period, as planned, was "four weeks or less."

In Hearing Decision 16-UI-71802, the ALJ found that claimant "laid off on September 30, 2016." Hearing Decision 16-UI-71802 at 1, 2. The ALJ further found that since claimant's return to work date of October 31, 2016 was more than four weeks from the date of his layoff, claimant was not excused under OAR 471-030-0036(5)(b) from actively seeking work during weeks 40-16 and 41-16. We disagree.

In *Appeals Board Decision* 2016-EAB-1184, October 27, 2016, we considered facts markedly similar to those of this case in concluding that claimant was excused from any work seeking requirements other than maintaining contact with her regular employer and being capable of accepting and reporting for work during the four weeks after she was laid off. In reaching this conclusion, we reasoned that, although this claimant was notified on Friday, July 22, 2016 that she was going to be laid off, claimant's layoff did not actually begin until Monday, July 25, 2016, which was the first regularly scheduled work day on which she was prevented from working. Since claimant's employer had told her she would return to full time work on August 22, 2016, which was exactly four calendar weeks after the July 25, 2016 date claimant's layoff began, claimant was entitled to take advantage of the exception to the general work seeking requirements for temporary layoffs of four weeks or less, and was not ineligible for benefits because she did not seek work other than with her regular employer during the weeks of July 24, 2016 through August 6, 2016.

Applying the reasoning of *Appeals Board Decision* 2016-EAB-1184 to the facts of this case, while claimant was notified of his impending layoff on Friday, September 30, 2016, that layoff did not begin until Monday, October 3, 2016, the first day claimant was prevented from working. Since claimant was told he would return to full-time work on October 31, 2016 when he was notified of his layoff, the length of the planned layoff was exactly four weeks. As such, claimant's layoff fell within the parameters of OAR 471-030-0036(5)(b), and he was not required to do more than maintain contact with his regular employer and be capable of accepting and reporting for work during the weeks at issue, weeks 40-16 and 41-16. Having satisfied the requirements of OAR 471-030-0036(5)(b), claimant is not ineligible from benefits based on his work seeking activities during weeks 40-16 and 41-16.

DECISION: Hearing Decision 16-UI-71802 is set aside, as outlined above.

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

DATE of Service: January 9, 2017

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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