

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1360

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from July 24 through August 13, 2016 (decision # 102754). Claimant filed a timely request for hearing. On November 15, 2016, ALJ Wyatt conducted a hearing, and on November 18, 2016 issued Hearing Decision 16-UI-71397, affirming the Department's decision. On December 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from July 24 through August 13, 2016 (weeks 30-16 through 32-16), the weeks at issue. Claimant's weekly benefit amount during the weeks at issue was \$147.¹

(2) On July 21, 2016, claimant worked for his regular employer and was temporarily laid off from work, effective July 22, 2016. As of July 22, claimant had been told to return to work on August 12, 2016 for a four hour meeting. Based on past experience, claimant expected to return to his normal work schedule on or before August 22, 2016. As of July 22, however, he had not been given a date to return to his normal work schedule.

(3) On August 12, 2016, claimant attended the employer's meeting, for which he was paid \$39.² At the meeting, he was told that he would return to his normal work schedule on Monday, August 15, 2016.

¹ We take notice of this fact, which is contained in Employment Department records. 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.

(4) During the weeks at issue, claimant maintained contact with and was capable of accepting and reporting for any suitable work his regular employer, but he did not conduct any other work seeking activities.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must 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 few 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." *Id.* Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5)(a)(A). "Direct contact with an employer" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B).

However, for an individual on temporary layoff of four weeks or less with the individual's regular employer, if the individual had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, 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 following the end of the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b)(A). The individual does not meet the requirements of OAR 471-030-0036(5)(b)(A) if the individual had not, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount. OAR 471-030-0036(5)(b)(B).

Here, as of the layoff date, July 22, 2016, claimant had been told to return to work on Friday, August 12, 2016 for a four hour meeting, for which he would be paid \$39. Although claimant also expected to return to his regular work schedule within four weeks, he was not told until August 12 that he would return to his regular schedule on August 15, 2016. Thus, as of the layoff date, July 22, claimant had not been given a date to return to full-time work or work for which remuneration was paid or payable that equaled or exceeded his weekly benefit amount of \$147. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A). To be considered actively seeking work during the

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weeks at issue, he needed to comply with OAR 471-030-0036(5)(a), under which he was required to conduct at least five work seeking activities per week, with at least of those being direct contact with an employer who might hire him. Claimant did not comply with those requirements. He therefore did not actively seek work during the weeks at issue, and is not eligible for benefits for those weeks.

DECISION: Hearing Decision 16-UI-71397 is affirmed.

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

DATE of Service: December 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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