

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1404

Affirmed
Ineligible

PROCEDURAL HISTORY: On June 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from March 6, 2016 to April 30, 2016 and May 15, 2016 to May 21, 2016 (decision # 75917). On July 6, 2016, decision # 75917 became final without claimant having filed a timely request for hearing. On September 14, 2016, claimant filed a late request for hearing. On September 19, 2016, ALJ Kangas issued Hearing Decision 16-UI-67737, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire by October 3, 2016. On September 29, 2016 claimant mailed his response to the Office of Administrative Hearings (OAH), which received claimant's response on October 3, 2016. On October 12, 2016, OAH sent a letter stating Hearing Decision 16-UI-67737 was canceled. On November 8, 2016, OAH mailed notice of a hearing scheduled for November 22, 2016. On November 22, 2016, ALJ Seideman conducted a hearing, and on November 29, 2016 issued Hearing Decision 16-UI-71855, allowing claimant's late request for hearing and affirming decision # 75917. On December 13, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested EAB review the ALJ's determination allowing claimant's late request for hearing. We therefore confine our review to the work search issue.

FINDINGS OF FACT: (1) On February 29, 2016, claimant last worked for his regular employer on February 29, 2016. Effective March 6, 2016, that employer laid claimant off work. He was working less than full time at the time of his layoff due to a seasonal lull in available work and no full time work was likely to be available for him until June 2016 or later. The layoff was for an indefinite period, and the employer did not know when it would return claimant to work because his return to work was contingent on completion of some major repair or construction work at the employer's premises.

(2) On March 10, 2016, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for the weeks of March 6, 2016 through April 30, 2016 and May 15, 2016 through May 21, 2016 (weeks 10-16 through 17-16 and week 20-16), the weeks at issue. He did not contact any new employers or conduct any other work seeking activities during any of those weeks.

(3) When claimant filed his claim for benefits, he reported to the Department that he was on a temporary layoff from his regular employer. He reported that he had last worked on February 29, 2016 and was to return to work on April 1, 2016. On April 8, 2016, claimant reported to the Department that he did not have a return to work date.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work from March 6, 2016 to April 30, 2016 and May 15, 2016 to May 21, 2016.

ORS 657.155(1)(c) requires that individuals actively seek work as a condition of being eligible for unemployment insurance benefits. With few exceptions, an individual is “actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity,” which means conducting “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.” OAR 471-030-0036(5)(a) (February 23, 2014).

Claimant agreed that he did not conduct at least five work seeking activities per week during the weeks at issue, and did not make direct contact with employers who might hire him. He is therefore ineligible for benefits during the weeks at issue unless an exception to the work search requirement applies to his circumstances.

The only exception that could apply in this case says that some individuals who are laid off work by their regular employers may be excused from having to seek work while claiming benefits, but only if the layoff was four weeks or less and the individual was, at the time of the layoff, given “a date to return to full-time work.” OAR 471-030-0036(5)(b).

The preponderance of the evidence is that the layoff was well over four weeks long, and, given the seasonal nature of the work during the weeks at issue, any return to work from the layoff was not to full-time work. Nor did claimant’s regular employer give claimant a return to work date at the time of his layoff; for example, claimant testified that he was told when the employer was “hoping” to return him to work. Audio recording at ~ 34:45. For each of those reasons, the exception to the work search requirement does not apply to claimant.

It is apparent from this record that claimant did not understand the work search requirement as it applied to him during the weeks at issue. There is, however, no exception to the work search requirement for that reason. Because claimant did not actively seek work during the weeks at issue, and no exceptions to the work search requirement apply to claimant, he is not eligible for benefits from March 6, 2016 to April 30, 2016 and May 15, 2016 to May 21, 2016.

DECISION: Hearing Decision 16-UI-71855 is affirmed.

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

DATE of Service: January 12, 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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