

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0006

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 15, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from October 16 through 29, 2016 (decision # 95141). Claimant filed a timely request for hearing. On December 21, 2016, ALJ M. Davis conducted a hearing and issued Hearing Decision 16-UI-73441, affirming the Department's decision. On January 4, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks of October 16 through 29, 2016 (weeks 42-16 and 43-16), the weeks at issue.

(2) On Thursday, October 13, 2016, worked for his regular employer, which notified claimant that he was being laid off, effective Friday, October 14, 2016. Claimant was not given a date to return to work.

(3) On Monday October 17, 2016, claimant contacted his regular employer, which informed him that he would work on Friday, October 21, 2016 and Monday, October 24, 2016. Claimant worked for the employer on October 21, 2016 and earned less than his weekly benefit amount. Claimant worked on October 24, 2016 and earned less than his weekly benefit amount.

(4) Sometime after October 24, 2016, the employer notified him that he would return to full time work on November 1, 2016.

(5) During the weeks at issue, claimant remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer, but did not search for work with other employers.

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 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 typically 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.*¹ 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. 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 claimant's layoff date, October 14, 2016, he had not been given a date to return to work. On October 17, 2016, claimant's regular employer notified him that he would return to work on October 21 and 24, 2016, but not to full time or work for which remuneration was paid or payable that equaled or exceeded claimant's weekly benefit amount. Claimant worked part-time for the employer during the weeks at issue, and therefore was not laid off during those weeks. It was not until sometime after October 24, 2016, that the employer gave claimant a date to return to full time work. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A), and was 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. Claimant did not do so.

Claimant did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 16-UI-73441 is affirmed.

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

DATE of Service: January 23, 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.

¹ "Direct contact" 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).

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