

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0018

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of August 28, 2016 through September 24, 2016 (decision # 71625). Claimant filed a timely request for hearing. On December 28, 2016, ALJ Wymer conducted a hearing issued and issued Hearing Decision 16-UI-73750, affirming the Department's decision. On January 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) October 6, 2016, claimant filed an initial claim for unemployment insurance benefits. At around that time, the Department notified claimant that to receive benefits in any week, he was required to perform at least five work seeking activities in that week, of which at least two needed to be direct contacts with employers who were hiring.

(2) Sometime before August 25, 2016, HLC Trucking hired claimant as a full-time log truck driver. On Thursday, August 25, 2016, claimant's supervisor told him that he was going to be laid off for a month. The first day that claimant would not be able to work because of the layoff was Friday, August 26, 2016. The supervisor instructed claimant to call the employer on Sunday, September 25, 2016 to verify that he would return to work a month later, on Monday, September 26, 2016.

(3) Sometime around August 25 or 26, 2016, claimant restarted his claim. When he restarted his claim, the Department again notified claimant of that to be eligible to receive benefits for any week he claimed he needed to actively seek work during that week, which required him to perform five work seeking activities. Claimant claimed benefits during the weeks of August 28, 2016 through September 24, 2016 (weeks 35-16 through 38-16), the weeks at issue. During the weeks at issue, claimant indicated in his weekly claim report that he was on a temporary layoff. Claimant did not report any work seeking activities during the weeks at issue other than maintaining contact with HLC Trucking.

(4) On September 25, 2016, claimant contacted his supervisor to determine whether he would return to work as anticipated on Monday, September 26, 2016. The supervisor told claimant that his return to work would be delayed for one week, and he should report for work on October 3, 2016.

(5) On October 3, 2016, claimant returned to full-time work for HLC Trucking.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue, the weeks of August 28, 2016 through September 24, 2016.

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). With 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.* However, an individual who is on a temporary layoff of four weeks or less with the individual's regular employer and who was, as of the layoff date, given a date to return to full-time work or work for which the remuneration paid or payable exceeds the individual's weekly benefit amount 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).

At hearing, claimant focused on disproving the Department's contention that he did not provide a return to work date when he restarted his claim on August 25 or 26, 2016 to show he was entitled to take advantage of the exemption from the usual work seeking requirements during the weeks at issue for individuals on a temporary layoff as set out at OAR 471-030-0036(5)(b). Audio at ~15:00, ~18:50. However, even if claimant had reported to the Department an anticipated return to work date of September 26, 2016 when he restarted his claim, the issue of whether that return to work date was within four weeks of his layoff, allowing him to fall within the exemption to the general work seeking requirements for temporary layoffs, would still remain unresolved. Claimant testified he was notified on August 25, 2016 that he was going to be laid off, and that the first day he was unable to report for work due to the layoff was August 26, 2016. Audio at ~21:36. Because August 26, 2016 was the first day that claimant missed work due to the layoff, it is considered the effective date of the layoff. At the time of the layoff, claimant thought he was going to return to work on Monday, September 26, 2016. Audio at ~18:50, ~27:24. The period of the layoff that claimant anticipated as of the layoff date was therefore from Friday, August 26, 2016 until Monday, September 26, 2016. *See Appeals Board Decision, 2016-EAB-1184* (October 27, 2016). Because claimant's return to work date of September 26, 2016 was four weeks and three days after the layoff date of August 26, 2016, that layoff was more than four calendar weeks long. As such, the layoff to which claimant was subjected did not allow him to take advantage of the exemption from the usual work seeking requirements of OAR 471-030-0036(5)(a).

No exemptions from the work seeking requirements of OAR 471-030-0036(5)(a) other than that for individuals on a temporary layoff were potentially applicable to claimant's circumstances, and he was therefore required to meet the work seeking requirements of OAR 471-030-0036(5)(a). It is undisputed that claimant did not perform five work seeking activities during the weeks at issue, and did nothing other than maintain contact with HLC Trucking. On this record, claimant did not actively seek work during the weeks at issue, and is not eligible to receive benefits for those weeks.

DECISION: Hearing Decision 16-UI-73750 is affirmed.

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

DATE of Service: January 27, 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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