

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0077-R

Affirmed
Ineligible Weeks 44-16 through 47-16

PROCEDURAL HISTORY: On November 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 80759) concluding that claimant did not actively seek work from October 30 through November 26, 2016 (weeks 44-16 through 47-16). Claimant filed a timely request for hearing. On December 29, 2016, ALJ Vincent conducted a hearing, and on January 4, 2017, issued Hearing Decision 17-UI-74055, affirming the administrative decision. On January 23, 2017, claimant's employer, Lee Enterprises filed an application for review. On January 24, 2017, Hearing Decision 17-UI-74055 became final without an application for review having been filed by a party to this case. On January 25, 2017, the Employment Appeals Board (EAB) issued Appeals Board Decision 2017-EAB-0077, dismissing the employer's application for review because EAB had no authority to review an application for review not filed by a party. On February 1, 2017, claimant submitted a letter to EAB in which he asked that EAB "re-consider the decision at hand."

Application for Review: An application for review may be filed on a form provided by the Department or Office of Administrative Hearings, but use of a form is not required, provided that a party "requests review of a specific hearing decision, or otherwise expresses intent to appeal a specific hearing decision." OAR 471-041-0060(1) (January 8, 2008). In his February 1, 2017 letter, claimant explains that he disagrees with Hearing Decision 17-UI-74055, and asks that EAB "re-consider the decision at hand." We find this letter expresses claimant's intent to appeal a specific hearing decision and construe it as an application for review of Hearing Decision 17-UI-74055.

ORS 657.270(6) required that claimant's applications for review of Hearing Decision 17-UI-74055 be filed on or before January 24, 2017. Because claimant's application for review was filed on February 1, 2017 it was late. OAR 471-041-0070 (August 30, 2011) provides that the filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875. "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist. OAR 471-041-0070(2)(b). With a late application for review, an applicant must provide a written statement regarding the circumstances that prevented a timely filing. OAR 471-041-0070(3).

In his February 1, 2017 letter, claimant indicated that he was aware that his employer appealed Hearing Decision 17-UI-74055 to EAB, and also knew that the appeal was denied. It therefore appears that claimant's failure to timely file his application for review resulted from his good faith belief that the employer was an appropriate party to contest the hearing decision. Claimant's misunderstanding about the application for review process was a circumstance beyond his reasonable control. Claimant has therefore shown good cause for filing an untimely application for review. Because claimant filed his application for review within seven days after the January 25, 2017 EAB decision that denied his employer's appeal was issued, he filed it within a reasonable time after circumstances preventing a timely filing ceased to exist. Claimant's late application for review is, therefore, allowed, and we will review the merits of this case.

FINDINGS OF FACT: (1) On January 29, 2016, claimant filed an initial claim for unemployment benefits.

(2) On October 28, 2016, claimant's employer, Lee Enterprises, told claimant that claimant and other employees would be laid off for a period of no more than two weeks while the employer awaited authorization to move equipment out of an area that had just been logged. Claimant was given no specific date by which he would be returning to work, however. Audio recording at 8:00.

(3) On October 31, 2016, claimant restarted his unemployment claim. Claimant claimed and was paid benefits for weeks 44-16 through 47-16 (October 30 through November 26, 2016), the weeks at issue. Claimant performed no work search activities during the weeks at issue.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant did not actively seek work from October 30 through November 26, 2016 (weeks 44-16 through 47-16).

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). 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).

On October 28, 2016, the date claimant was laid off by his employer, he was given no date by which he would be returning to work. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A) and was obligated 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 him. It is not enough that claimant was given a possible range of time within which the employer planned to return him to work, nor does it matter that the range of time was shorter than four calendar weeks, because OAR 471-030-

0036(5)(b)(A) requires that claimant be given an actual “date” for the exception to the work seeking requirement to apply. Because the employer did not give claimant a return to work “date,” and claimant conducted no work seeking activities during the weeks at issue, he is ineligible to receive benefits for these weeks.¹

DECISION: Hearing Decision 17-UI-74055 is affirmed.

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

DATE of Service: February 8, 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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¹ In his application for review, claimant explained the hardship he and his family will face if required to repay the benefits he received during the weeks at issue. We urge claimant to contact the Department’s Overpayment Recovery Unit at 1-800-553-5396 to discuss a payment plan.