

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0100-R

Reversed & Remanded

PROCEDURAL HISTORY: On November 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 144614) concluding claimant did not actively seek work during the weeks of August 21, 2016 through September 10, 2016 (weeks 34-16 through 36-16). Claimant filed a timely request for hearing. On January 11, 2017, ALJ Lease conducted a hearing issued and issued Hearing Decision 17-UI-74493, affirming the Department's decision. On January 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On February 15, 2016, EAB issued Appeals Board Decision 2017-EAB-0100, affirming the hearing decision under review. Also on February 15, 2017, claimant timely submitted written argument to EAB. EAB will exercise its discretion under ORS 657.290(3) and reconsider its decision to address issues raised in claimant's written argument.

In Appeals Board Decision 2017-EAB-0100, EAB found that claimant was not on a temporary layoff of four weeks or less during the weeks at issue, weeks 34-16 through 36-16. We found that because he was given a return to work date of September 19 when he was laid off on August 18, his layoff lasted more than 28 days. As a result, we concluded that “[c]laimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A)¹, 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 him.”² Because claimant conducted no work seeking activities during the weeks at issue, he was ineligible for

¹ OAR 471-030-0036(5)(b)(A) provides that 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.

² 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.*

unemployment benefits. As claimant points out in his written argument, however, EAB erred in calculating the length of claimant's layoff.

The record shows that claimant was notified of a layoff on August 18, but that the first day of missed work was August 22. Audio recording at 26:23. The date claimant missed work is considered the effective date of his layoff; because his return to work date of September 19 was 28 days after the date on which he was laid off, claimant met the first requirement for his layoff to be considered temporary. The record is unclear, however, whether claimant met the second requirement for a temporary layoff – *i.e.*, whether, after his layoff ended, he returned 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)(A). Although claimant asserted he returned to full time work after his layoff ended, he qualified it by testifying that the employer assigned him “as much full time work as was available,” and that business was “slow” for the employer. Audio recording at 27:06. On remand, the ALJ must ask how many hours claimant worked for the employer after he returned to work on September 19, and how much he earned. In addition, the ALJ must inquire of the Department representative or claimant what was his weekly benefit amount. This information is essential to determine whether claimant was exempt from looking for work during the weeks at issue because he was on a temporary layoff.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because additional information is needed to determine whether claimant was on a temporary layoff during the weeks at issue, reconsideration is granted, Hearing Decision 17-UI-74493 is reversed, and this matter remanded for further development of the record.

DECISION: Reconsideration is granted. Hearing Decision 17-UI-74493 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 21, 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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