

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0202

Affirmed
Ineligible Weeks 40-16 through 42-16

PROCEDURAL HISTORY: On November 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 132342) concluding that claimant failed to actively search for work from October 2 through October 22, 2016 (weeks 40-16 through 42-16). On November 21, 2016, decision # 13342 became final without a request for hearing having been filed. On December 27, 2016, claimant filed an untimely request for hearing. On December 29, 2016, ALJ Kangas issued Hearing Decision 16-UI-73828, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. By letter dated January 19, 2017, the Office of Administrative Hearings cancelled Hearing Decision 16-UI-73828. On February 8, 2017, ALJ Frank conducted a hearing, and on February 10, 2017, issued Hearing Decision 17-UI-76660, allowing claimant's late hearing request and affirming decision # 132342. On February 21, 2017, claimant filed an application for review of Hearing Decision 17-UI-76660 with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of Hearing Decision 16-UI-76660 that allowed claimant's late request for hearing. We therefore confine this decision to the issue of whether claimant actively sought work from October 2 through October 22, 2016 in accordance with ORS 657.155(1)(c) and OAR 471-030-0036(5).

FINDINGS OF FACT: (1) On October 8, 2016, claimant filed an initial claim for unemployment benefits. When she initially filed her claim, claimant stated that she was laid off from work for her regular employer but had not been given a date when she would be returning to work.

(2) Claimant filed claims for unemployment benefits for weeks 40-16 through 42-16, the weeks at issue. Each week that she filed her claim, claimant indicated that she was on a temporary layoff from her regular employer. Claimant performed no work search activities during the weeks at issue.

(3) On or about October 17, 2016, claimant's employer told her that she would be returning to full time work on October 24, 2016.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant did not actively search for 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). With limited 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.* An individual who is on a temporary layoff for four weeks or less with the individual's regular employer and had, *as of the layoff date, been given a date to return to work*, is considered to have actively sought 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 layoff occurred. OAR 471-030-0036(5)(b)(A). (Emphasis added).

The record shows that on the date the employer laid off claimant, she was given no date by which she would be returning to work. The employer notified her of the date it wanted to return to work only after she had been laid off for several days. Claimant was therefore not subject to the provisions of OAR 471-030-0036(5)(a) and was required to conduct at least five work seeking activities per week. Because claimant performed no work seeking activities during the weeks at issue, she is not eligible to receive benefits for those weeks.

DECISION: Hearing Decision 17-UI-76660 is affirmed.

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

DATE of Service: February 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.

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