

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0241

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 2, 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions, the first concluding claimant did not actively seek work during the weeks of October 2, 2016 through October 15, 2016 (decision #84257) and the second concluding claimant did not actively seek work during the week of October 16, 2016 through October 22, 2016 (decision # 84347). Claimant filed timely requests for hearing on both decisions. On February 9, 2017, ALJ Lohr conducted a consolidated hearing, and on February 13, 2017 issued two hearing decisions, the first affirming decision # 84257 (Hearing Decision 17-UI-76750) and the second affirming decision # 84347 (Hearing Decision 17-UI-76756). On February 24, 2017, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-76750 and 17-UI-76756. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0240 and 2017-EAB-0241).

FINDINGS OF FACT: (1) On October 6, 2016, claimant's regular employer laid him off due to bad weather and told him that there might be some work for him the next week, which was the week of October 10 through October 16, 2016. The employer did not tell claimant whether that work would be full-time or part-time or whether it would last a few hours or longer than one day. Claimant also understood that the performance of that work was contingent on the weather.

(2) On October 7, 2016, claimant filed an initial claim for unemployment insurance benefits. When claimant filed that claim, he was informed of the Department's requirement that, unless he was not working a result of a temporary layoff, he needed to perform five work-seeking activities during each week that he claimed benefits to be eligible to receive benefits for that week. Claimant was also informed that he was exempted from the requirement of five work-seeking activities if he was on a temporary layoff of four weeks or less from the date he was laid off and he had been given a definite date to full-time work within four weeks. At the time claimant filed his initial claim for benefits, claimant certified on the application that he completed that he was on a temporary layoff from his

regular employment. When prompted by the system to provide the specific date he would return to full-time work, claimant did not enter any date since he did not know the specific date he would return.

(3) Claimant also claimed benefits for the weeks of October 2, 2016 through October 22, 2016 (weeks 40-16 through 42-16), the weeks at issue. During week 40-16, claimant did not perform any work-seeking activities since he was believed he was going to perform some work for his regular employer during week 41-16 and he did not want any commitment that would conflict with the work he expected to perform. On October 11, 2016 (during week 41-16), claimant worked six hours for his regular employer and earned \$216. Claimant's regular employer did not ask him to perform any other work. During week 41-16, claimant did not perform any work seeking activities since he performed one day of work for his regular employer.

(4) On October 27, 2016, claimant restarted his unemployment claim since he performed work for his regular employer during week 41-16 and thought he needed to do so in order to claim benefits for subsequent weeks. At the time claimant restarted his claim for benefits, claimant again certified in his application that he was on a temporary layoff from his regular employment. When prompted by the system to provide the specific date he would return to full-time work, claimant did not enter any date since he did not know the specific date and it was dependent on weather. Claimant claimed benefits for week 42-16. Claimant did not perform any work-seeking activities in that week.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during weeks 40-16 through 42-16. Claimant is not eligible to receive benefits during those weeks.

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). 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 who had, as of the layoff date, been given a date to return to full-time 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).

Claimant did not dispute that he failed to perform five work-seeking activities during weeks 40-16 and 41-16, but contended that he fell within the exception to that requirement for those on temporary layoffs provided by OAR 471-030-0036(5)(b)(A). Audio at ~27:11, ~29:09, ~30:13. However, as of his layoff date and through all of the weeks at issue, claimant conceded that the employer had not given him a date upon which he was expected to return to work, much less that the date was within four weeks of the date of his layoff or that his return to work would be for *full-time* work, work that paid more than his weekly benefit amount, or work that was not contingent on the weather. Audio at ~22:20, ~23:26, ~25:10. Claimant was, therefore, not exempted from the requirement that he actively seek work as a condition of receiving unemployment benefits. Because claimant did not fall within the exemption and did not

perform five work-seeking activities during weeks 40-16 and 41-16, claimant did not actively seek work during those weeks and is not eligible to receive benefits during those weeks.

With respect to week 42-16, claimant did not dispute that he reported to the Department that he was on a temporary layoff that week, but testified that he nonetheless thought he engaged in work-seeking activities that week and identified the potential employers he thought he contacted. Audio at ~28:07. At the outset, it is not clear why claimant would have performed work-seeking activities if he thought he was exempted from the usual work-seeking requirements. As well, claimant was hesitant when he identified the employers he contacted, apparently because he was relying on memory rather than testifying from records he had created contemporaneously with performing the work-seeking activities. Audio at ~27:00. However, claimant did not dispute the accuracy of the Department representative's testimony that claimant reported to the Department that he contacted the employers he identified at hearing not during week 42-16, but during weeks 44-16 and 45-16, and appeared to concede that he was confused about what, if any, work-seeking activities he engaged in during week 42-16. Audio at ~37:03. Based on these factors, it is more likely than not that claimant did not perform five work-seeking activities during week 42-16 and is not eligible to receive benefits for that week.

DECISION: Hearing Decisions 17-UI-76750 and 17-UI-76756 are affirmed.

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

DATE of Service: March 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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