

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0242

Affirmed
Ineligible Weeks 33-16 through 36-16

PROCEDURAL HISTORY: On November 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 143723) concluding that claimant failed to actively search for work from August 14 through September 10, 2016 (weeks 33-16 through 36-16). Claimant filed a timely request for hearing. On February 3, 2017, ALJ Kangas conducted a hearing, and on February 14, 2017 issued Hearing Decision, affirming the administrative decision. On February 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent that it was relevant and based on the hearing record.

FINDINGS OF FACT: (1) On August 9, 2016, claimant's regular employer, Heatmaster, told claimant that he would be laid off through September 10, 2016. The first day that claimant had been scheduled to work for the employer but did not was August 10, 2016.

(2) On August 14, 2016, claimant filed an initial claim for unemployment benefits online. When he filed his initial claim, claimant stated that his last day worked was August 9, 2016, and that he would be returning to work on September 12, 2016. Because claimant's layoff was scheduled to last more than four weeks, he was given instructions online that in order to receive unemployment benefits he was expected to meet certain requirements; one of these requirements was that he actively search for work with other employers. Audio recording at 16:08.

(3) By letter dated August 23, 2017, the Department informed claimant that in order to receive unemployment benefits, he was required to register and meet with staff at a Department Worksource office. On August 25, 2017, claimant met with staff at a Department Worksource office. Exhibit 1.

(4) Claimant claimed benefits for weeks 33-16 through 36-16 (August 14 through September 10, 2016), the weeks at issue. Each week that claimant filed his claim for benefits, he certified that he was on a temporary layoff of four weeks or less. Claimant believed that the date on which his layoff began was August 14, because that was the date on which he filed his initial claim for benefits.

(5) During the weeks at issue, claimant performed no work search activities other than remaining in contact with Heatmaster.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant failed to 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).

The record shows that on August 9, claimant was notified he would be laid off and would return to work on September 12. The date claimant first missed work – August 10 – is considered the effective date of his layoff; because his return to work date was more than 28 days from the date of layoff, he was not subject to the temporary layoff exemption from conducting an active work search under OAR 471-030-0036(5)(b). Because claimant performed no work search activities other than remaining in contact with his regular employer during the weeks at issue, he did not actively search for work and is therefore ineligible to receive benefits for those weeks.

Claimant, however, asserted that when he met with Department representatives on August 25, he was told that he did not need to look for work with other employers because he would be returning to work for his regular employer. Audio recording 26:54. Claimant would have us apply the doctrine of equitable estoppel to prevent the Department from denying claimant benefits. However, the doctrine of equitable estoppel "requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it." *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party "must have relied on the agency's representations and the party's reliance must have been reasonable." *State ex rel SOSOC v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

Assuming without deciding that a Department representative told claimant on August 25 that he need not conduct an active work search, the record fails to show that any such statement was made with full knowledge of the facts or that claimant reasonably relied upon this statement when he filed his weekly claims for benefits. The record contains no evidence regarding what claimant told the Department representative regarding the dates of his layoff, nor any evidence why claimant relied on a Department representative's statement that contradicted information he received when he filed his claim online. In

addition, claimant could claimant not have relied on a representation made by a Department representative on August 25, during week 34-16, when he filed his claim for week 33-16. We therefore conclude that the Department cannot be prevented from denying claimant benefits for weeks 33-16 through 36-16 under the doctrine of equitable estoppel. Claimant is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-76929 is affirmed.

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

DATE of Service: March 6, 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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