

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0284

Modified – Ineligible Weeks 46-16 through 51-16
Modificada – No Elegible Semanas 46-16 a 51-16

PROCEDURAL HISTORY: On December 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to actively seek work from November 13, 2016 to November 24, 2016 (decision # 84004). Claimant filed a timely request for hearing. On February 27, 2017, ALJ Lohr conducted an interpreted hearing, and on February 28, 2017 issued Hearing Decision 17-UI-77849, concluding claimant failed to actively seek work from November 27 to December 24, 2017. On March 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

The ALJ admitted Exhibit 1 into evidence, but failed to mark it as such. Transcript at 3, 4. As a clerical matter, we have identified the exhibit based on the description of it; “Claimant Letter” marked it as Exhibit 1, and, for informational purposes, attached copies of the exhibit to decisions mailed to the parties.

FINDINGS OF FACT: (1) In early November 2016, claimant worked as a tractor operator, which was seasonal work, for his regular employer Laurence Brothers, Inc. On November 11, 2016, the employer told claimant that he was being laid off and would return to work pruning trees “in the month of December after four weeks.” Transcript at 15. The employer did not provide claimant with a return to work date.

(2) On November 16, 2016, claimant filed an initial claim for unemployment insurance benefits. When he filed his initial claim, a Department representative advised him and claimant understood that to qualify for benefits, he was required to “actively seek work” during each week claimed. Transcript at 10. He filed weekly claims for benefits for the weeks including November 13, 2016 through December 24, 2016 (weeks 46-16 to 51-16), the weeks at issue.

(3) During each of the weeks at issue claimant contacted his regular employer about returning to work, but did not perform any other work search activities.

CONCLUSIONS AND REASONS: We agree with the ALJ in part. We agree that claimant did not actively seek work during the weeks at issue but disagree that the weeks at issue were November 27 through December 24, 2016. We modify the ALJ's decision to clarify that the weeks at issue were November 13 through December 24, 2016.

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).

In order for the "temporary layoff" exception to apply, the individual must have, "as of the layoff date, been given a date to return to . . . work." *Id.* It is not enough that the individual was told he will return to work between two dates, within a month, in a month, or even within a certain number of weeks, even if the total planned layoff period amounts to less than four weeks. The rule specifically requires that the individual must be given "a date" to return to work. Here, the employer told claimant that he was being laid off and would return to work "in the month of December after four weeks", which is not "a date."

Because claimant was not given "a date" to return to work, he does not qualify for the "temporary layoff" exception to the work seeking rule. He was, therefore, required to actively seek work each week he claimed benefits as a condition of being eligible to receive them. In order to meet that requirement, claimant must have performed five work seeking activities during each of the weeks at issue; the record shows that he did not. We must conclude that claimant did not actively seek work during the weeks at issue, and he is, therefore, ineligible to receive benefits during those weeks.

In Hearing Decision 17-UI-77849, the ALJ found that the only weeks for which claimant filed claims for benefits and were at issue in this proceeding were the weeks including November 27 through December 24, 2016. Hearing Decision 17-UI-77849 at 1. However, the record shows that the parties agreed that the weeks for which claimant filed benefits and were at issue were the weeks including November 13 through December 24, 2016. Transcript at 8-9. Accordingly, Hearing Decision 17-UI-77849 is being modified to clarify the weeks for which claimant is ineligible for benefits in this proceeding for not actively seeking work are the weeks including November 13 through December 24, 2016 (weeks 46-16 through 51-16).

DECISION: Hearing Decision 17-UI-77849 is modified, as outlined above. *Decisión de la Audiencia 17-UI-77849 se modifica, de acuerdo a lo indicado arriba.*

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

DATE of Service: March 27, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.