

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0570-R

Reconsideration Granted
Appeals Board Decision 2017-EAB-0570 Adhered to on Reconsideration

PROCEDURAL HISTORY: On March 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of January 29, 2017 through February 11, 2017 and February 19, 2017 through February 25, 2017 (decision # 124342). Claimant filed a timely request for hearing. On April 28, 2017, ALJ Frank conducted a hearing, and on May 3, 2017 issued Hearing Decision 17-UI-82434, affirming the Department's decision. On May 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On June 13, 2017, EAB issued Appeals Board Decision 2017-EAB-0570, affirming Hearing Decision 17-UI-82434.

On June 28, 2017, EAB received a letter in which claimant states that she wants "to appeal the decision of the appeal court." Claimant's letter appears to be a request that EAB reconsider Appeals Board Decision 2017-EAB-0570, and EAB will exercise its discretion under ORS 657.290(3) to reconsider its decision and address the issue raised in claimant's letter.

In Appeals Board Decision 2017-EAB-0570, EAB found that claimant did not actively search for work during the weeks at issue, weeks 05-17 through 06-17 and week 08-17, and was therefore ineligible to receive unemployment benefits for those weeks under ORS 657.155(1)(c).¹ We rejected claimant's assertion that she was not required to search for work during the weeks at issue because she was on a temporary layoff from Jeld-Wen, her regular employer.² We noted that the record demonstrated that

¹ 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). 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.*

² 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)(February 23, 2014).

during each of the weeks at issue, Jeld-Wen continued to employ claimant at temporarily reduced hours. Because a “layoff” means that the employer temporarily has no work available for claimant, we concluded that Jeld-Wen had not laid claimant off and she was not eligible for the temporary layoff exception the work search requirements of ORS 657.155(1)(c).³

In her June 28 letter, claimant stated that “I believe that I did not have to look for work, because our hrs [sic] were cut for a few weeks and we’re right back working full-time.” In support of her assertion, claimant provided information she received from the Department regarding work search requirements; claimant argued that this information substantiated her contention that she did not need to conduct a work search during the weeks at issue. The Department information claimant received states that the work search requirements apply to

“...each week you claim benefits unless you:

*Are laid-off AND have a definite date to return to FULL-TIME work for your employer, AND your definite date to return to work is WITHIN FOUR WEEKS from when you were laid off.

You are actively seeking work if you stay in touch with your employer. If your return to full-time work is delayed, you must call the UI Center and must begin seeking other work immediately.

NOTE: This exception does NOT apply if you work part-time on a continual basis with your employer.

Contrary to claimant’s assertion, this Department information states that the temporary layoff exception to the work search requirements does not apply to the claimant’s situation during the weeks at issue. Claimant performed some work for the employer during each of these weeks and was therefore continuing to work for the employer on a part time basis. EAB therefore did not err in concluding that because claimant was not on a temporary layoff, she was not exempt from the requirement that she search for work during the weeks at issue. We therefore adhere to Appeals Board Decision 2017-EAB-0570 on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision “to the extent necessary and appropriate for the correction of a previous error of fact or law”).

DECISION: Reconsideration is granted. Appeals Board Decision 2017-EAB-0570 is adhered to on reconsideration.

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

DATE of Service: July 5, 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,

³ A relevant definition of “layoff” is “a period of inactivity or idleness.” *See* <https://www.merriam-webster.com/dictionary/layoff>.

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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