

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0580**

*Reversed and Remanded*

**PROCEDURAL HISTORY:** On March 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 18, 2016 through January 14, 2017 (decision # 142205). Claimant filed a timely request for hearing. On April 19, 2017, ALJ Snyder conducted a hearing, and on April 21, 2017 issued Hearing Decision 17-UI-81599, affirming the Department's decision. On May 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument and the entire hearing record.

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-81599 is reversed, and this matter is remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seeking 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 of four weeks or less with the individual's regular employer and had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, 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 Hearing Decision 17-UI-81599, the ALJ found that claimant was placed on a temporary layoff from work for his regular employer on Friday, December 16, 2016, was given a return to work date of January 16, 2017, and that claimant did not seek work other than maintaining contact with his regular employer from December 18, 2016 through January 14, 2017 (weeks 51-16 through 2-17), the weeks at

issue.<sup>1</sup> Based on those findings, the ALJ concluded that because claimant's return to work date was more than four weeks after his last day of work, he was required to seek work during the weeks at issue, did not do so, and therefore is ineligible for benefits for those weeks.<sup>2</sup>

We agree with the ALJ's finding that claimant last worked for his regular employer on Friday, December 16, 2016, that his regular employer told him he would return to work on Monday, January 16, 2017, and that claimant did not seek work with other employers during the weeks at issue. However, EAB has held that in determining whether an individual is on a temporary layoff of four weeks or less, the layoff date is that on which the individual first misses work due to the layoff, and not that on which the individual last worked before the layoff. Appeals Board Decision 2016-EAB-1355 (January 9, 2017) (claimant's layoff began on the first regularly scheduled work day on which she was prevented from working); Appeals Board Decision 2016-EAB-1184 (October 27, 2016) (applying the plain meaning of "layoff date," which is when the period of work inactivity begins); Appeals Board Decision 2016-EAB-0645 (July 8, 2016) (claimant's layoff date was the first day he missed work due to the layoff); Appeals Board Decision 2016-EAB-0308 (April 15, 2016) (claimant was laid off effective . . . the first day he missed work due to the layoff).

Claimant testified that his regular employer of 25 years employed him in the construction industry and that he considered a work week to be Monday through Friday. Audio Record at 13:50 to 14:09, 14:55 to 15:32. In the present case, the ALJ conducted no inquiry into the date on which claimant first missed work due to the layoff. Absent such an inquiry, EAB cannot determine claimant's layoff date, or whether he was on a temporary layoff of four weeks or less. We therefore cannot determine whether he was required to conduct five work seeking activities per week during the weeks at issue, or merely to remain in contact with and be capable of accepting and reporting for any suitable work with his regular employer. Absent such inquiries, we cannot determine whether claimant actively sought work during the weeks at issue, or therefore whether he is eligible for benefits for those weeks.

On remand, the ALJ should inquire what type of construction work claimant performed, and what the first regularly scheduled workday was that claimant did not work due to layoff. The ALJ should ask the Department what the customary work week was in the construction industry for the type of work claimant performed for his regular employer. The ALJ should ask claimant if, in his experience with his regular employer, his work week varied. Did claimant have a regular schedule, and if yes, what was his schedule? Did his schedule include Saturdays or Sundays? The ALJ should also ask if claimant was supposed to return to *full time* work on January 16, 2017, or work for which remuneration was paid or payable that equaled or exceeded claimant's weekly benefit amount.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant actively sought work during the weeks at issue, Hearing Decision 17-UI-81599 is reversed, and this matter is remanded for development of the record.

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<sup>1</sup> Hearing Decision 17-UI-81599 at 3.

<sup>2</sup> *Id.*

**DECISION:** Hearing Decision 17-UI-81599 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: June 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](http://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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