

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0725

Affirmed
Request to Reopen Allowed
Ineligible Weeks 44-16 to 47-16

PROCEDURAL HISTORY: On February 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from October 30, 2016 to November 26, 2016 (decision # 100029). Claimant filed a timely request for hearing. On February 15, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 1, 2017, at which time claimant failed to appear. On March 1, 2017, ALJ M. Davis issued Hearing Decision 17-UI-77964, dismissing claimant's request for hearing for failure to appear. On March 15, 2017, claimant filed a request to reopen the March 1st hearing. On April 28, 2017, OAH mailed notice of a hearing scheduled for May 19, 2017. On May 19, 2017, ALJ S. Lee conducted a hearing, and on May 26, 2017 issued Hearing Decision 17-UI-84402, allowing claimant's request to reopen and affirming decision # 100029. On June 15, 2017, claimant filed an application for review of Hearing Decision 17-UI-84402 with the Employment Appeals Board (EAB).

On his application for review, claimant wrote, "I do not remember ever receiving a letter for this hearing" and "I am requesting an appeal for the week in February." The matter before EAB is whether claimant actively sought work from October 30, 2016 to November 26, 2016. If claimant has questions about his claim for benefits for a week in February, he should contact the Department directly.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to allowing claimant's request to reopen are **adopted**.

FINDINGS OF FACT: (1) On October 24, 2016, claimant's regular employer laid claimant off work because there was not enough work for him. The general manager instructed claimant he would be returned to work when business increased, and to call each Monday to find out if there was work.

(2) On November 3, 2016, claimant filed an initial claim for benefits. At the time he filed his initial claim he reported to the Department that he had been laid off work. Claimant filed weekly claims for benefits for the weeks including October 30, 2016 to November 26, 2016 (weeks 44-16 to 47-16), the weeks at issue. The Department paid benefits or assigned waiting week credit to claimant for each of

those weeks. During the weeks at issue, claimant's only work-seeking activity was maintaining weekly contact with his regular employer.

CONCLUSIONS AND REASONS: Claimant did not actively seek work from October 30, 2016 to November 26, 2016, and is therefore ineligible for 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). 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).

The exception to the actively seeking work requirement for claimants laid off from their regular jobs only applies to certain kinds of layoffs. Specifically, the exception only applies if claimant was given a date to return to work. In this case, although claimant thought or was told that his layoff was temporary, he was not given a date to return to work. Because claimant was not given a date to return to work, he did not qualify for the layoff exception and was therefore required to perform five work seeking activities each week in order to be eligible for benefits. Claimant's only activity during each of the weeks at issue was maintaining contact with his regular employer, which only amounts to one activity per week. Claimant therefore did not actively seek work each week, and he is ineligible for benefits during the weeks at issue.

DECISION: Hearing Decision 17-UI-84402 is affirmed.

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

DATE of Service: July 10, 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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