

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0858

Modified
Ineligible Weeks 49-16 through 52-16
Eligible Weeks 1-17 through 2-17

PROCEDURAL HISTORY: On March 13, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding that claimant did not actively seek work from December 4, 2016 through January 14, 2017 (decision # 90302), and one concluding that claimant did not actively seek work from February 12 through February 25, 2017 (decision # 91138). Claimant filed timely requests for hearings on both administrative decisions. On July 6, 2017, ALJ Hall conducted a consolidated hearing, and on July 6, 2017, issued Hearing Decision 17-UI-87367, affirming decision # 90302, and Hearing Decision 17-UI-87380, affirming decision # 91138. On July 17, 2017, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-87367 and 17-UI-87380. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0858 and 2017-EAB-0859).

FINDINGS OF FACT: (1) On January 17, 2016, claimant filed an initial claim for unemployment insurance benefits. On November 28, 2016, claimant restarted his claim online. Claimant's last day of work with his regular employer was November 30, 2016. Claimant's employer did not give him a date that he would return to work. On November 30, 2016, the Department sent claimant an advisement by mail regarding the work search requirement and exceptions.

(2) Claimant claimed the period from December 4, 2016 through January 14, 2017 (weeks 49-16 through 2-17), at which time his claim expired. Other than remaining in contact with his regular employer, claimant did not engage in work search activities during weeks 49-16 through 52-16.

(3) On February 12, 2017, claimant filed another initial claim for unemployment insurance benefits. Claimant had still not worked since November 30, 2016.

(4) During week 1-17, in addition to contacting his regular employer, claimant sought work in person with four other employers: Farmer Logging, Norling Logging, Fisher Logging, and Joe Vargess.

(5) During week 2-17, in addition to contacting his regular employer, claimant spoke to four other employers in person: Speas Logging, Ed Parera Logging, Richie Matthews, and Ron Halica.

(6) Claimant returned to work for his regular employer on February 28, 2017. At no time from November 26, 2016 until claimant returned to work on February 28 did the employer give claimant a definite date that he would return to full time work because the return to work date depended primarily on weather conditions.

CONCLUSIONS AND REASONS: We conclude that claimant did not actively seek work during weeks 49-16 through 52-16, but did actively seek work during weeks 1-17 through 2-17.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). “Actively seeking work” generally means doing what an ordinary and reasonable person would do to return to work at the earliest opportunity, specifically, doing five work seeking activities per week, including at least two being direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (February 23, 2014). Individuals who are “on temporary layoff of four weeks or less with the individual’s regular employer” may be exempt from seeking work with other employers for a four-week period, but only if “the individual 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,” in which case the individual is considered to have actively sought work merely by remaining in contact with the employer, and being capable of accepting and reporting for suitable work opportunities. *See* OAR 471-030-0036(5)(b).

The record shows that, as of claimant’s initial layoff date, claimant’s regular employer did not give claimant a date that claimant would return to full time work because claimant’s return to work was dependent on the weather. Because claimant was never given a return to work date, the work search exception for a temporary layoff under OAR 471-030-0036(5)(b) did not apply to claimant’s situation. Claimant was therefore not exempt from the active work search requirement and was required to seek work by performing five work seeking activities per week during each of the weeks at issue. Other than maintaining contact with his regular employer, claimant conducted no work seeking activities during weeks 49-16 through 52-16. Therefore, we conclude that claimant did not conduct an active work search during those weeks.

Regarding weeks 1-17 and 2-17, the ALJ found as fact that claimant did not “make contact with employers to inquire about specific job openings or apply for specific job openings” during weeks 1-17 and 2-17¹ and therefore his direct employer contacts were not with employers who might have hired claimant.² However, there is no provision in Oregon law or the Department’s administrative rules that requires that direct contacts with an employer must be regarding specific job openings. *See generally* ORS chapter 657, OAR chapter 471. An employer might hire an individual without having advertised a

¹ Hearing Decision 17-UI-87367 at 2.

² *Id.* at 3.

job opening. We infer from claimant's actions in contacting specific employers known to him when he needed work and had "some bills to pay," that they were employers who might have hired claimant. Transcript at 23. Similarly, because the return to work date with his regular employer was uncertain and depended on weather conditions, it was reasonable for claimant to seek work with his regular employer each week to return to work at the earliest opportunity. Including his regular employer each week, claimant completed five work seeking activities during each of weeks 1-17 and 2-17, four of which were direct contact with employers that might have hired claimant. Therefore, we conclude that claimant did conduct an active work search during those weeks.

In sum, we conclude that claimant did not actively seek work during weeks 49-16 through 52-16, but did actively seek work during weeks 1-17 through 2-17.

DECISION: Hearing Decisions 17-UI-87367 and 17-UI-87380 are modified, as outlined above.

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

DATE of Service: August 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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