

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1157

Modified
Weeks 25-17 Through 27-17 - Ineligible
Week 28-17 - Eligible

PROCEDURAL HISTORY: On August 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of June 18, 2017 through July 15, 2017 (decision # 80112). Claimant filed a timely request for hearing. On September 20, 2017, ALJ Janzen conducted a hearing and issued Hearing Decision 17-UI-92911, affirming the Department's decision. On September 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On November 7, 2017, claimant filed an initial claim for benefits. On June 18, 2017, Lamb-Weston, claimant's regular employer, laid him off. Lamb-Weston did not give claimant a date on which he should expect to return to work, but told him he would likely be called back at some point and to check in every week.

(2) On June 23, 2017, claimant filed an additional claim for benefits. Claimant claimed benefits for the weeks of June 18, 2017 through July 15, 2017 (weeks 25-17 through 28-17), the weeks at issue.

(3) During weeks 25-17 through 27-17, claimant sought work only by contacting Lamb-Weston. During week 28-17, claimant sought work by contacting Lamb-Weston, American Hay, Beef Northwest, M & J and Smith Family. Transcript at 12, 14.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during weeks 25-17 through 27-17 and is not eligible to receive benefits for those weeks. Claimant actively sought work during week 28-17 and is eligible to receive benefits for that week.

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 Hearing Decision 17-UI-92911, the ALJ concluded claimant was not on a temporary layoff during the weeks at issue and, since he found that claimant did not perform five working seeking activities during each of the weeks at issue, he was not eligible to receive benefits for weeks 25-17 through 28-17. We disagree with the ALJ's conclusion in connection with week 28-17.

At the outset, it appears that Lamb-Weston, claimant's regular employer, laid him off work but did not provide to him, as of the date he was laid off, a date on which he should expect to return to full time work. As a result, we agree with the ALJ that the exception to the work search requirement for certain individuals while they are laid off from work does not apply to claimant and that claimant needed to perform five work seeking activities each week that he claimant benefits in order to be eligible to receive them.

With respect to weeks, 25-17 through 27-17, claimant agreed with the Department's witness that the only work seeking activity in which he engaged was to remain in contact with Lamb-Weston. Transcript at 8-9. We concur with the ALJ that, since claimant did not perform five work seeking activities in each of weeks 25-17 through 27-17, claimant was not eligible to receive benefits in any of those weeks. However, while the Department's representative testified that claimant only performed four work seeking activities in week 28-17 and listed those employer-contact activities, in his testimony, claimant identified a fifth employer contact he made in week 28-17, with Smith Family. Transcript at 5, 10, 12-13. There is no reason in the record to doubt that claimant sought work from this presumably potential employer, Smith Family, during week 28-17 even if he did not report it on his weekly claim report. Because the preponderance of evidence shows that claimant performed five work seeking activities during week 28-17, of which at least two appeared to have been direct contacts with employers who might hire him, claimant actively sought work in that week and was not ineligible to receive benefits for that week based on an inadequate work search.

Claimant did not actively seek work during weeks 25-17 through 27-17, but did actively seek work during week 28-17. For these reasons, claimant was ineligible to receive benefits for weeks 25-17 through 27-17, but was not ineligible to receive benefits for week 28-17.

DECISION: Hearing Decision 17-UI-92911 is modified, as outlined above. *Decisión de la Audiencia 17-UI-92911 se modifica, de acuerdo a lo indicado arriba.*

J. S. Cromwell and D. P. Hettle.

DATE of Service: October 30, 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.

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