

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1385**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On September 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of August 16, 2015 through August 29, 2015 (decision # 121602). Claimant filed a timely request for hearing. On November 3, 2015, ALJ M. Davis conducted a hearing, and on November 4, 2015 issued Hearing Decision 15-UI-47125, affirming the Department's decision. On November 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument contained a letter from his supervisor, who also testified at the hearing. The letter contained new information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant's regular employer was Weyerhaeuser, where claimant worked as a log truck driver. Claimant was a member in good standing of Woodworkers Local 246 IAMAW, a closed union.

(2) On August 14, 2015, claimant's supervisor at Weyerhaeuser told claimant he was temporarily laid off from work due to fire danger from the weather conditions. Weyerhaeuser did not give claimant a return to work date on August 14, 2015 because it did not know when the weather conditions would improve such that claimant could return to work.

(3) On August 22, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks of August 16 through August 29, 2015 (weeks 33-15 and 34-15). These are the weeks at issue. The Department initially gave claimant waiting week credit for week 33-15, and paid claimant benefits for week 34-15.

(4) Claimant remained in contact with Weyerhaeuser during weeks 33-14 and 34-15. Claimant did not contact his union or engage in other work seeking activities during the weeks at issue.

(5) On Friday, August 28, 2015, Weyerhaeuser told claimant he would return to work the next week.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not actively seek work during weeks 33-15 and 34-15.

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). Individuals typically 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.* However, for an individual on temporary layoff of four weeks or less with the individual’s regular employer, 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, such individual is actively seeking 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 temporary layoff occurred. OAR 471-030-0036(5)(b)(A). The individual does not meet the requirements of OAR 471-030-0036(5)(b)(A) if the individual had not, 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. OAR 471-030-0036(5)(b)(B). For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union. OAR 471-030-0036(5)(d). Where, as here, the Department initially pays a claimant benefits or gives claimant waiting week credit, the Department has the burden to establish by a preponderance of the evidence that the claimant is not entitled to those benefits or waiting week credit. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

During the weeks at issue, claimant was on temporary layoff of less than four weeks with his regular employer, but did not meet the requirements of OAR 471-030-0036(5)(b)(A) because, as of the layoff date, he was not given a date to return to work. Claimant was also a member in good standing of a closed union during the weeks at issue. Therefore, to be actively seeking work under OAR 471-030-0036(5), claimant was required to remain in contact with his union and be capable of accepting and reporting for work when dispatched by that union. It is undisputed that claimant did not contact his union during the weeks at issue. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A) for individuals on a temporary layoff or OAR 471-030-0036(5)(d) for members in good standing with a closed union, and was not exempt from seeking work during the weeks at issue, but conducted no work search activities other than remaining in contact with his regular employer. Therefore, he did not actively seek work during the weeks at issue, and claimant is ineligible for benefits for weeks 33-15 and 34-15.

**DECISION:** Hearing Decision 15-UI-47125 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service: December 29, 2015**

**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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