

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0606

Affirmed
Ineligible Weeks 7-16 to 11-16

PROCEDURAL HISTORY: On March 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from February 14, 2016 to March 19, 2016 (decision # 134245). Claimant filed a timely request for hearing. On April 21, 2016 and May 6, 2016, ALJ Monroe conducted a hearing, and on May 13, 2016 issued Hearing Decision 16-UI-59538, affirming the Department's decision. On May 23, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed weekly claims for benefits for the weeks including February 14, 2016 to March 19, 2016 (weeks 7-16 to 11-16), the weeks at issue.

(2) At all relevant times, Fall Creek Logging employed claimant as a timber faller. Claimant was subject to periodic layoffs between logging projects.

(3) On February 12, 2016, claimant's supervisor notified claimant that there was no work for him for one month. The supervisor did not give claimant a calendar date or name the week he expected claimant's work to resume.

(4) On February 22, 2016, claimant filed an additional claim for benefits. He reported that he was on a "temporary layoff" from employment that began February 13, 2016 and he was scheduled to return to work on March 14, 2016. Claimant did not perform five working seeking activities during any of the weeks at issue.

(5) On March 10, 2016, claimant's supervisor informed claimant that his return to work would be delayed by approximately one week. On March 21, 2016, claimant returned to work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue.

Unless exempt, unemployed individuals must actively seek work during each week claimed to be eligible to receive unemployment insurance benefits. ORS 657.155(1)(c). An individual must do "what an ordinary and reasonable person would do to return to work at the earliest opportunity," including "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." OAR 471-030-0036(5)(a). Individuals who are "on temporary layoff of four weeks or less" may be except from having to seek other work, but only "if the individual had, as of the layoff date, been given a date to return to . . . work." OAR 471-030-0036(5)(b)(A). Those individuals are considered to have actively sought work just by maintaining contact with his or her regular employer. *Id.*

Although there is no dispute that he was on a layoff from his regular employment during the weeks at issue, not every layoff from employment is considered a "temporary layoff" of the sort that qualifies for the Department's exemption to the work search requirement. In this case, claimant was not "given a date to return to . . . work" at the time the occurred layoff. It appears that at the time of the layoff, claimant's supervisor told claimant he was not going to be needed at work for one month. Although "one month" is an increment of time, it is not a "date," and, depending on the month, it might mean as little as 28 days or as many as 31 days. We cannot conclude that claimant's layoff was to last four weeks or less based on the supervisor's use of the phrase "one month." In common usage, and as this record shows the Department uses it, the word "date" is defined, in pertinent part, as "the day of the month or year as specified by a number."¹ There is nothing in this record suggesting that claimant's supervisor gave claimant a "date" to return to work at the time the layoff commenced.

Even if we had concluded otherwise, the outcome of this decision would remain the same. The "temporary layoff" exception to the work search requirement is for layoffs of "four weeks or less." Four weeks is 28 days. On this record, claimant's layoff occurred on February 12, 2016, and he reported to the Department that his return to work date was scheduled for March 14, 2016, which was 31 days after the layoff date. The 31 day period of claimant's anticipated layoff therefore exceeded the four-week (28-day) period allowed under the Department's rules.

Claimant was not exempt from actively seeking work during the weeks at issue under the "temporary layoff" exception. Claimant was, therefore, required to actively seek work each week as a condition of being eligible for benefits, by doing five work search activities, including two direct employer contacts, each week. Claimant did not do five work search activities during any of the weeks at issue. Therefore, we conclude that he did not actively seek work, and he is ineligible to receive unemployment insurance benefits from February 14, 2016 to March 19, 2016 (weeks 7-16 to 11-16).

DECISION: Hearing Decision 16-UI-59538 is affirmed.

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

DATE of Service: June 21, 2016

¹ <http://www.bing.com/search?q=date+defin&src=IE-TopResult&FORM=IETR02&conversationid=>

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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