

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1163**

*Affirmed*  
*Ineligible Weeks 23-16 through 25-16*

**PROCEDURAL HISTORY:** On July 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 91700) concluding that claimant did not actively search for work from June 5 through June 25, 2016 (weeks 23-16 through 25-16). Claimant filed a timely request for hearing. On September 20, 2016, ALJ Wyatt conducted a hearing, and on September 28, 2016, issued Hearing Decision 16-UI-68171, affirming the administrative decision. On October 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant claimed benefits for weeks 23-16 through 25-16, the weeks at issue.

(2) On June 3, 2016, claimant's regular employer notified him that he was being temporarily laid off for a period of two weeks. Claimant's employer told him that that the layoff might last less than two weeks, however, depending on the resolution of some scheduling issues.

(3) During weeks 23-16 through 25-16, claimant regularly contacted the employer to ask if any work was available for him, contacted the Tribal Employment Rights Program (TERO), and also contacted friends in the construction business about available work. TERO placed claimant on a list of individuals who would be contacted about available laborer jobs. Claimant performed no work for his regular employer or any other employer during the weeks at issue, however.

(4) On July 3, 2016, claimant returned to work for the employer.

**CONCLUSION AND REASONS:** Claimant did not actively seek work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must 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.* 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). The individual does not meet those requirements 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. *Id.*

On June 3, 2016, the date he was laid off by his regular employer, the employer did not give claimant a specific date by which he would be returning to work. Instead, the employer told claimant he would be laid off for two weeks, but could possibly return to work at an earlier date, depending on the resolution of some scheduling issues. Because, as of the layoff date, claimant was given no definite date by which he would be returning to work, he was not subject to the provisions of the temporary layoff rule in regard to his work search, and was subject to the work search requirements of OAR 471-030-0036(5)(b). Although claimant conducted some work search activities – registering with TELO and contacting friends about possible construction jobs – the record fails to show that he performed at least five work seeking activities during each of the weeks at issue, with at least two of those being direct contact with employers who might hire him. Because claimant failed to actively search for work during weeks 23-16 through 24-16, he is ineligible to receive unemployment benefits for those weeks.

**DECISION:** Hearing Decision 16-UI-68171 is affirmed.

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

**DATE of Service: October 19, 2016**

**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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