

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1338**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On September 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of August 14, 2016 through September 10, 2016 (decision # 131257). Claimant filed a timely request for hearing. On November 8, 2016, ALJ Wyatt conducted a hearing, and on November 10, 2016 issued Hearing Decision 16-UI-70925, affirming the Department's decision. On November 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On August 5, 2016, claimant was laid off from work with his regular employer, which operated a logging business. At the time of the layoff, claimant was told he would not return to work until "around" September 20, 2016, but "it might be longer." Audio at ~13:56.

(2) On August 15, 2016, claimant filed an initial claim for unemployment insurance benefits. When claimant filed his claim, claimant stated his last day of work was August 5, 2016 and that he did not have a return to work date.

(3) Claimant filed claims for the weeks of August 14, 2016 through September 10, 2016 (weeks 33-16 through 36-16), the weeks at issue. When claimant filed his weekly claim report for weeks 33-16 and 34-16, claimant reported that he contacted his regular employer as his only work seeking activity and stated that he was "starting back in four weeks." Audio at ~4:42. When claimant filed his weekly claim report for week 35-16, claimant reported that his only work seeking activity was contacting his regular employer and that he was returning to work on September 20, 2016. When claimant filed his weekly claim report for week 36-16, claimant again reported that his only work seeking activity was contacting his regular employer, but stated that he was going to expand his work seeking activities beyond maintaining contact with his regular employer because his return to work date was "farther out than four weeks." Audio at ~4:42. Claimant did not return to work with his regular employer on September 20, 2016.

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work during weeks 33-16 through 36-16. Claimant is not eligible to receive benefits during those weeks.

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 few 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.* If an individual is on temporary layoff of four weeks or less with the individual's regular employer and the individual had, as of the layoff date, been given a date to return to work full-time work, the individual is considered to have been 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).

Claimant conceded that he "screwed up" when he filed his weekly claim reports during the weeks at issue and that the approximate return to work date of September 20, 2016 that the employer had given him when he was laid off was not within four weeks of that layoff. Audio at ~15:40. It also does not appear to us that the employer's statement to claimant that his layoff "might be longer" than September 20, 2016 was sufficiently certain to constitute a return to work date within the meaning of OAR 471-030-0036(5)(d)(A), even if September 20, 2016 were within four weeks of the date of claimant's layoff. For both of these reasons, claimant was not eligible to take advantage of the exception to the general work seeking requirements for individuals on a temporary layoff of four weeks or less. Since claimant conceded he did not perform any work seeking activities during the weeks at issue other than maintaining contact with his regular employer and no other exceptions to the general work seeking requirements are applicable to claimant's situation, by not performing at least five work seeking activities during the weeks at issue, claimant did not actively seek work during those weeks. Audio at ~14:38. Claimant is not eligible to receive benefits during weeks 33-16 through 36-16.

**DECISION:** Hearing Decision 16-UI-70925 is affirmed.

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

**DATE of Service:** December 29, 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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