

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0100

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 28, 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 21, 2016 through September 10, 2016 (decision # 144614). Claimant filed a timely request for hearing. On January 11, 2017, ALJ Lease conducted a hearing issued and issued Hearing Decision 17-UI-74493, affirming the Department's decision. On January 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) For an undetermined period up to August 18, 2016, claimant worked full-time for Precision Castparts, a foundry, as a lead worker in its casting department. On Thursday, August 18, 2016, claimant's supervisor told him he was being laid off and that he would return to work on September 19, 2016.

(2) On August 22, 2016, claimant filed an initial claim for unemployment insurance benefits. At that time, the Department sent claimant a notification by mail (UI PUB 195) stating that to receive benefits in any week, he was required to perform at least five work seeking activities in that week, of which at least two needed to be direct contacts with employers who were hiring. The notification also informed claimant that those work seeking requirements did not apply if "you are laid-off AND have a definite date to return to FULL-TIME work for your employer, AND your definite date to return to work is WITHIN FOUR WEEKS from when you were laid off." ¹

(3) Claimant claimed benefits for the weeks including August 21, 2016 through September 10, 2016 (weeks 34-16 through 36-16), the weeks at issue. During each week at issue, when filing his weekly claim, claimant reported that he was on a temporary layoff. Claimant did not conduct or report any work seeking activities during those weeks, although he maintained contact with his employer.

¹ From text of UI PUB 195. We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) On September 19, 2016, claimant returned to work for his employer.

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

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.*² 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. 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 within four weeks of the layoff date. OAR 471-030-0036(5)(b)(B).

Here, on claimant’s layoff date, August 18, 2016, he was given September 19, 2016 as his return to work date, and that was the date on which he actually returned to work. However, September 19 was not within four weeks, 28 days, of his layoff date. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A), and was 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 him. Claimant, admittedly, did not do so because he misunderstood the temporary layoff rule, believing that his layoff started on the first day of work missed, or August 22, 2016, and that his return to work on September 19 would be 28 days later and within the time confines of the rule. Audio Record ~ 30:00 to 31:00.

Claimant did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-74493 is affirmed.

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

DATE of Service: February 15, 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,

² “Direct contact” means “making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer.” OAR 471-030-0036(5)(a)(B).

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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