

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0166

Affirmed
Ineligible

PROCEDURAL HISTORY: On December 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to actively seek work from October 30, 2016 to December 3, 2016 (decision # 104337). Claimant filed a timely request for hearing. On January 13, 2017, ALJ Monroe conducted a hearing, and on January 20, 2017 issued Hearing Decision 17-UI-75172, affirming the Department's decision. On February 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 30, 2016, claimant last worked for his employer of 15 years. On approximately October 30, 2016, the owner notified claimant that the company was going to lay him off for a month due to a slowdown in business. The owner did not provide claimant with a return to work date, but claimant understood from the conversation that the employer planned to return him to work during the first part of December.

(2) On November 4, 2016, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits for the weeks of October 30, 2016 to December 3, 2016 (weeks 44-16 to 48-16), which are the weeks at issue. The Department either assigned claimant waiting week credit or paid him benefits each week except the week of November 27, 2016 to December 3, 2016.

(3) During each of the weeks at issue claimant contacted his regular employer about returning to work, but did not perform any other work search activities.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work from October 30, 2016 to December 3, 2016.

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 limited 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.* An individual who is on a temporary layoff for four weeks or less with the individual's regular employer and had, as of the layoff date, been given a date to return to work, is considered to have actively sought 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 layoff occurred. OAR 471-030-0036(5)(b)(A).

In order for the "temporary layoff" exception to apply, the individual must have, "as of the layoff date, been given a date to return to . . . work." *Id.* It is not enough that the individual was told he will return to work between two dates, within a month, in a month, or even within a certain number of weeks, even if the total planned layoff period amounts to less than four weeks. The rule specifically requires that the individual must be given "a date" to return to work. Here, the employer told claimant that he would be laid off for a month, which is not "a date." Nor can we infer that a "month" fits within the "four weeks or less" exception given that a month is usually 30 or 31 days and therefore exceeds four weeks.

Because claimant was not given a "date" to return to work, he does not qualify for the "temporary layoff" exception to the work seeking rule. He was, therefore, required to actively seek work each week he claimed benefits as a condition of being eligible to receive them. In order to meet that requirement, claimant must have performed five work seeking activities during each of the weeks at issue; the record shows that he did not. We must conclude that claimant did not actively seek work during the weeks at issue, and he is, therefore, ineligible to receive benefits during those weeks.

DECISION: Hearing Decision 17-UI-75172 is affirmed.

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

DATE of Service: February 27, 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, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.