

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0296

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from October 30 through November 26, 2016 (decision # 64711). Claimant filed a timely request for hearing. On February 28, 2017, ALJ Kangas conducted a hearing, and on March 1, 2017 issued Hearing Decision 17-UI-77976, affirming the Department's decision. On March 8, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from October 30 through November 26, 2016 (weeks 44-16 through 47-16), the weeks at issue.

(2) Claimant initially was scheduled to work for his regular employer on Monday, October 31, 2016. That morning, however, claimant's regular employer notified claimant that he was on temporary layoff, effective immediately. Claimant was told that he would return to work within a few weeks. He was not given a date to return to work.

(3) Claimant did not search for work with other employers during weeks 44-16 through 47-16.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during weeks 44-16 through 47-16.

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). 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) (February 23, 2014).

In the present case, it is undisputed that claimant did not conduct at least five work seeking activities per week during weeks 44-16 through 47-16. The issue is whether he was exempted from doing so under OAR 471-030-0036(5)(b)(A). At hearing, claimant initially testified that his return to work date “was supposed to be within four weeks at the most.” Audio Record at 16:10. He then testified that he was told that his layoff would be a “few weeks,” and that it was not even supposed to be three weeks, only two. Audio Record at 18:35-18:50. However, claimant admitted that he was not given a date to return to work, as is required under OAR 471-030-0036(5)(b)(A). Audio at 19:10. Claimant therefore was not exempt from the requirement that he conduct five work seeking activities per week under that provision. Claimant did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-77976 is affirmed.

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

DATE of Service: March 31, 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.

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