

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0340

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from November 27 through December 10, 2016 (decision # 71927). Claimant filed a timely request for hearing. On March 2, 2017, ALJ McGorin conducted a hearing and issued Hearing Decision 17-UI-78074, affirming the Department's decision. On March 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from November 27 through December 10, 2016 (weeks 48-16 and 49-16), the weeks at issue. The Department paid claimant benefits for those weeks.¹

(2) During the weeks at issue, claimant was on temporary layoff from work with his regular employer, and had not been given a date to return to work within four weeks of the layoff date. Claimant remained in contact with his regular employer and was capable of accepting and reporting for any suitable work with that employer. During week 48-16, claimant also contacted three employers in addition to his regular employer to see if work was available. During week 49-16, claimant again contacted three employers in addition to his regular employer to see if work was available. Claimant did not conduct any other work seeking activities during the weeks at issue.

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

¹ 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.

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).

Where, as here, the Department initially paid a claimant benefits, the Department bears the burden to establish by a preponderance of evidence that the claimant is not eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). In the present case, however, the record shows that claimant did not conduct at least five work seeking activities during either of the weeks at issue. The record further shows that claimant was not exempt from doing so under OAR 471-030-0036(5)(b)(A) because, although he was on temporary layoff from work with his regular employer, he had not been given a date to return to work within four weeks of the layoff date. The Department therefore established that claimant did not actively seek work during the weeks at issue. Claimant is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-78074 is affirmed.

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

DATE of Service: April 4, 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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