

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0362**

*Affirmed*  
*Ineligible Weeks 02-17 and 03-17*

**PROCEDURAL HISTORY:** On February 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from January 8 through January 21, 2017 (decision # 110516). Claimant filed a timely request for hearing. On March 13, 2017, ALJ Lohr conducted a hearing, and on March 15, 2017 issued Hearing Decision 17-UI-78947, affirming the Department's decision. On March 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) On December 26, 2016, claimant filed his initial claim for benefits. During December 2016, claimant received advisories from the Department about the requirements of an acceptable work search when he filed his initial claim online, in a publication mailed to him from the Department, and during a reemployment evaluation and assessment meeting at the Department.

(2) Claimant claimed benefits for the weeks from January 8 through January 21, 2017 (weeks 02-17 and 03-17), the weeks at issue. The Department denied claimant benefits for those weeks. Weeks 02-17 and 03-17 are the weeks at issue.

(3) During the weeks at issue, claimant sought work as a dump truck driver. He was on temporary layoff from work with his regular employer, Riverbend Sand and Gravel, and had not been given a date to return to full time work within four weeks of the layoff date.

(4) During weeks 02-17 and 03-17, claimant engaged in three work-seeking activities each week and made one direct employer contact with his regular employer. Claimant misunderstood the work search requirements and believed he could include Riverbend Sand and Gravel as his only direct employer contact each week.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that 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). 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 full-time 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 denied a claimant benefits, the claimant bears the burden to establish by a preponderance of evidence that the claimant is not eligible for those benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). In the present case, it was undisputed at hearing that claimant did not conduct at least five work seeking activities during either of the weeks at issue. During each of the weeks at issue, claimant conducted three work seeking activities, and made one employer contact with his regular employer. Thus, he had a total of four, not five, work seeking activities per week. The record further shows that claimant was not exempt from conducting at least five work seeking activities per week 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 full-time work within four weeks of the layoff date. Claimant therefore did not establish that he actively sought work during the weeks at issue. Claimant is ineligible for benefits for weeks 02-17 and 03-17.

**DECISION:** Hearing Decision 17-UI-78947 is affirmed.

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

**DATE of Service:** April 10, 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](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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