

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0369**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On February 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of January 1, 2017 through January 28, 2017 (decision #103921). Claimant filed a timely request for hearing. On March 21, 2017 ALJ Monroe conducted a hearing, and on March 24, 2017 issued Hearing Decision 17-UI-79582, affirming the Department's decision. On March 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On April 1, 2016 claimant began working for Knife River as a ready-mix operator. Knife River was in the business of heavy construction. Sometime after claimant was hired, he learned that the employer's business slowed down significantly in the bad weather months of fall and winter and that his hours would be significantly reduced in those months.

(2) In November and December 2016, the employer's business slackened and claimant's hours were progressively reduced until he was working only a few hours per week. Claimant asked his supervisor how he could supplement his income and the supervisor suggested that claimant file a claim for unemployment insurance benefits until his hours were increased. Since claimant was not familiar with the process, the supervisor helped claimant complete the online application for unemployment insurance benefits on January 3, 2017. Claimant stated in the application that he had last worked on December 27, 2016, when he was temporarily laid off. At the time, however, claimant expected to continue to work for the employer at least some hours each week and to receive compensation for that work. When the application asked claimant to supply the date that he expected to return to work, claimant asked his supervisor and the supervisor entered a return to work date of January 25, 2017 on the application.

(3) Claimant claimed benefits during the weeks of January 1, 2017 through January 28, 2017 (weeks 01-17 through 04-17), the weeks at issue. Each week when claimant claimed benefits, he certified that he was on a temporary layoff and did not list any work search activities other than maintaining contact with Knife River. Claimant reported that he worked for Knife River during each of the weeks at issue as follows: week 01-17 - 8 hours; week 02-14 - 13 hours; week 03-17 - 5 hours; and week 04-16 - 11 hours.

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work during the weeks 01-17 through 04-17 and is not eligible to receive benefits during those weeks.

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)(February 23, 2014).

While claimant testified with apparent sincerity that he thought he was on temporary layoff when he filed his claim for unemployment benefits since his hours had been significantly reduced, he did not contend that his supervisor or the employer told him at any time that all work to him from the employer was going to cease for any period of time. Indeed, claimant expected to and did work some hours for the employer during the weeks at issue. A "temporary layoff" is a period of time in which there is a temporary cessation of all work; an individual who continues to work on-call or reduced hours for the employer is not on a "temporary layoff" within the meaning of OAR 471-030-0036(5)(b) and is not exempt from the general work seeking requirements of OAR 471-030-0036(5)(a). *See* UI Pub 195 (01-14) (if full-time hours reduced but currently working at least some part-time hours, an individual is not considered to be on temporary layoff, is not exempt from the general work seeking requirements and must comply with the work seeking requirements of OAR 471-030-0056(5)(a)); February 5, 2014 Memorandum from George Berriman, Manager UI Programs and Methods to All Staff Re: Active Work Search Requirements (claimants who continue to work some part-time hours after a supposed layoff are not considered to be on a temporary layoff and must perform the minimum of five work seeking activities each week to receive benefits for that week); *see also Appeals Board Decision*, 2016-EAB-0488, May 4, 2016, adopting Hearing Decision 16-UI-57855 (claimant who worked between 1 and 3 hours each week not considered to be on temporary layoff because she "continued to work part-time for the employer" and was therefore required to perform five work seeking activities to receive benefits).

Claimant did not dispute that he performed no work seeking activities during the weeks at issue other than working for and maintaining contact with Knife River. Audio at ~20:40. While the actions of claimant's supervisor might have led him to believe he could take advantage of the exemption from work seeking activities for those on temporary layoffs, that claimant continued to perform work for the employer during the weeks at issue excluded him from being excused from seeking work while claiming benefits under the "temporary layoff" exemption to the work seeking requirement. Since claimant was not on temporary layoff during the weeks at issue, and no other exemptions were applicable to claimant's circumstances, claimant was required to perform five work seeking activities each week that he claimed benefits. Claimant did not do so and he is therefore not eligible to receive benefits during the weeks at issue.

**DECISION:** Hearing Decision 17-UI-79582 is affirmed.

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

**DATE of Service:** April 14, 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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