

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0412**

*Affirmed*  
*Ineligible – Weeks 52-16 through 02-17*

**PROCEDURAL HISTORY:** On February 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the period December 25, 2016 through January 14, 2017 (decision # 132459). Claimant filed a timely request for hearing. On March 23, 2017, ALJ Frank conducted a hearing, and on March 24, 2017, issued Hearing Decision 17-UI-79608, affirming the Department's decision.

**FINDINGS OF FACT:** (1) On December 21, 2016, claimant was laid off from work with his regular employer, Delta Sand and Gravel (DS&G), due to winter weather conditions. At the time of the layoff, claimant was given a return to work date of January 23, 2017, but understood the return to work date depended on the weather.

(2) Claimant filed an initial claim for unemployment benefits on December 22, 2016. When filing his claim, claimant reported that he had last worked on December 21, 2016, but did not report a return to work date. Claimant claimed benefits for each of the weeks including December 25, 2016 through January 14, 2017 (weeks 52-16 through 02-17). These are the weeks at issue. When filing each of his weekly claims, claimant reported to the Department that he was on a temporary layoff and did not report any work seeking activities.

(3) On or about February 14, 2017, a Department investigator contacted claimant by mail about his benefit claims for the weeks at issue and requested that he provide work search information for each of those weeks. Claimant responded with the requested work search information.

(4) During week 52-16, claimant contacted his employer four times and reviewed the want ads in a local newspaper in an effort to obtain work. During weeks 01-17, claimant contacted his employer to determine if there was available work. During week 02-17, claimant contacted his employer to determine if there was available work.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant did not actively seek work and is ineligible for benefits 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). 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). OAR 471-030-0036(5) states that the minimum requirements for an individual to be considered “actively seeking work” are five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual. Examples of work seeking activities include, but are not limited to registering for job placement services with the Department, attending job placement meetings sponsored by the Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5)(a).

OAR 471-030-0036(5)(b) provides, in pertinent part:

... (b) For an individual on temporary layoff of four weeks or less with the individual’s regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to work, such individual is actively seeking 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 temporary layoff occurred. After four calendar weeks have passed following the week in which the temporary layoff occurred, the individual must seek work with other employers in addition to the individual’s regular employer.

Where, as here, the Department pays a claimant benefits or gives him waiting week credit for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department met its burden. The Department established, and claimant did not dispute, that claimant was not put on a temporary layoff of four weeks or less and that his regular employer had not given him a date on which he would return to work that was within four weeks of the date on of layoff when it laid him off on December 21, 2016. Accordingly, under OAR 471-030-0036(5), claimant was required to perform a minimum of five work seeking activities per week, with at least two of those being direct contact with an employer who might hire him. Claimant admitted that he contacted no employer other than his regular employer during the weeks at issue because he believed he was on a temporary layoff and did not fully understand the work search advisories at the time. Audio Record ~ 10:25 to 11:35. Because he did not, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for the weeks including December 25, 2016 through January 14, 2017 (weeks 52-16 through 02-17).

**DECISION:** Hearing Decision 17-UI-79608 is affirmed.

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

**DATE of Service: April 28, 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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