

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0423**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On February 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from November 27 through December 31, 2016 (decision # 84218). Claimant filed a timely request for hearing. On March 16, 2017, ALJ Shoemake conducted a hearing, and on March 23, 2017, issued Hearing Decision 17-UI-79471, affirming the Department's decision. On April 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 27, 2016, claimant was laid off from work as a bartender with her regular employer, Corner Club. At the time of the layoff, claimant was given a return to work date of December 29, 2016.

(2) Claimant filed an initial claim for unemployment benefits on November 29, 2016. When filing her claim, claimant reported that she had last worked on November 11, 2016 and would return to work on December 29, 2016. On December 2, 2016, the Department mailed to claimant at her address of record a work search advisory that advised claimant that to be eligible for benefits, she was required to complete at least five work seeking activities for each week she claimed benefits.

(3) Claimant claimed and was paid benefits for the weeks from November 27, 2016 through December 31, 2016 (weeks 48-16 through 52-16), the weeks at issue. When filing each of her weekly claims, claimant reported to the Department that she was on a temporary layoff and did not report any work seeking activities other than maintaining contact with her employer.

(4) During each of the weeks at issue, claimant's only work seeking activity was to contact her employer to determine if she could return to work.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant did not actively seek work during the weeks at issue and is ineligible for benefits for 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). 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 her 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 or credit. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department met its burden. The Department established that claimant was not put on a temporary layoff of four weeks or less, and that her regular employer had not given her a date on which she would return to work that was within four weeks of either her last day worked or her reported layoff date of November 27, 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 her. Claimant did not dispute that she contacted no employer other than her regular employer during the weeks at issue because she believed she was on a temporary layoff. She asserted that she based her belief on a conversation she had with a Department representative on December 12, 2016 during which she was reportedly told that if she was returning to work within four weeks of her claim filing date, she was on a temporary layoff. Audio Record ~ 14:40 to 17:20. However, claimant was not scheduled to return to work within four weeks of November 29, her claim filing date. Accordingly, claimant had no basis on which to believe she was on temporary layoff, and knew or should have known based on the December 2 letter and the December 12 conversation, that she was required to perform 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. Because she did not, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for those weeks.

**DECISION:** Hearing Decision 17-UI-79471 is affirmed.

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

**DATE of Service:** May 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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