

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0428

Affirmed
Ineligible Week 52-16

PROCEDURAL HISTORY: On February 3, 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 through December 31, 2016 (decision # 133701). Claimant filed a timely request for hearing. On March 23, 2017, ALJ S. Lee conducted a hearing, and on March 24, 2017, issued Hearing Decision 17-UI-79611, affirming the Department's decision. On April 12, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 15, 2016, claimant was laid off from work as a welder with his regular employer, PCC Structurals, due to a slowdown in business. At the time of the layoff, claimant was not given a return to work date.

(2) Claimant filed an initial claim for unemployment benefits on June 23, 2016. Following his layoff, claimant filed an additional claim and was paid benefits for the week including December 25 through December 31, 2016 (week 52-16). When filing his weekly claims, claimant reported to the Department that he was on a temporary layoff without reporting a return to work date or any work seeking activity other than maintaining contact with his employer. This is the week at issue.

(3) During the week at issue, claimant's only work seeking activity was contact with his employer to determine if he could return to work.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant did not actively seek work and is ineligible for benefits during the week 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 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).

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. Although claimant was laid off for less than four weeks, the Department established, and claimant did not dispute, that when he was laid off, his employer did not give him any date on which he would return to work. 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 another employer who might hire him. Claimant did not dispute that he contacted no employer other than his regular employer during the week at issue because he believed he was on a temporary layoff. Accordingly, claimant did not actively seek work during the week including December 25 through December 31, 2016 (week 52-16) and is ineligible for benefits for that week.

DECISION: Hearing Decision 17-UI-79611 is affirmed.

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

DATE of Service: May 12, 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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