

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0475

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 1 through January 21, 2017 (decision # 132020). Claimant filed a timely request for hearing. On April 5, 2017, ALJ Seideman conducted a hearing, and on April 6, 2017 issued Hearing Decision 17-UI-80471, affirming the Department's decision. On April 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) CPM Development Corporation employed claimant as a ready mix concrete driver beginning in 2016 through the weeks at issue. Although claimant was considered a full time employee, claimant's work was job and weather dependent, and he was required to contact the employer the night before each work day to determine if and when there would be work available the next day.

(2) During the months of December 2016 and January 2017, weather restricted the number of jobs available and claimant's work was sporadic and limited. On or about December 16, 2016, claimant filed an initial claim for unemployment benefits.¹ Claimant claimed and received benefits for the weeks including January 1 through January 21, 2017 (weeks 01-17 through 03-17), the weeks at issue. When filing each of his weekly claims, claimant reported to the Department that that he was on a temporary layoff and did not report any work seeking activities.

(3) In February 2017, the Department performed an audit of claimant's claims due to the lack of reported work seeking activities. On February 5, 2017, the Department mailed claimant a letter requesting information regarding his work seeking activities during the weeks at issue. Claimant did not complete or return the letter but twice spoke to Department representatives by phone. On March 6, 2017, claimant told a Department investigator that his work was weather dependent, and although he

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

had reported he was temporarily laid off, the employer had not given him a return to work date. He also confirmed that he had performed no work search activities other than to contact the employer each night to determine the next day's schedule because he believed he did not need to search for other work for at least four weeks due to his temporary layoff.

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). 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 week², 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 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 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 either his last day worked or a reported layoff date. Accordingly, under OAR 471-030-0036(5), to be eligible for benefits, 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 reported to the Department investigator 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 have to for at least four weeks. Audio Record ~13:30 to ~16:00. Because he did not perform the required five work seeking activities per week, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-80471 is affirmed.

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

DATE of Service: May 19, 2017

² 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 a potential employer. OAR 471-030-0036(5)(a).

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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