

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0491**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On January 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits from November 13, 2016 to December 3, 2016 (weeks 46-16 through 48-16) because he did not actively seek work (decision # 85354). Claimant filed a timely request for hearing. On April 7, 2017, ALJ S. Lee conducted a hearing, and on April 14, 2017 issued Hearing Decision 17-UI-81053, affirming the Department's decision. On April 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On February 8, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant worked for his regular employer on November 12, 2016. The employer did not announce a layoff or reduction in force, but during the following weeks lacked full-time work for claimant because of inclement weather. The employer did not schedule claimant to return to work on any particular date, but claimant estimated that he would return to work on December 16, 2016.

(3) On November 22, 2016, claimant restarted his unemployment insurance claim. He filed weekly claims for weeks including November 13, 2016 to December 3, 2016 (weeks 46-16 through 48-16), the weeks at issue. He remained in contact with his regular employer and worked whenever the employer had work available for him, but did not otherwise do any work seeking activities.

(4) The Department paid claimant benefits for each of the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant was ineligible for benefits during weeks 46-16, 47-16 and 48-16 because he did not actively seek work from November 13, 2016 to December 3, 2016.

To be eligible to receive benefits, unemployed individuals must 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 the Department paid claimant benefits, the Department must prove that benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In order to qualify for the exception to the work search requirement for individuals temporarily laid off work for four weeks or less, the employer must, "as of the layoff date," have given claimant a date to return to work. In this case, claimant was off work due to inclement weather and the employer did not give claimant a date to return to work; rather, claimant estimated his return to work date. Although claimant's estimate might have been a reasonable one based on his understanding of the circumstances, and regardless if claimant actually returned to work on the exact date he had estimated he would, without the employer having *given* claimant a return to work date at the time the employer laid him off, claimant cannot qualify for the exception to the work search requirement. In order to be considered eligible for benefits, he must therefore have actively sought work by conducting "at least five work seeking activities per week" during each of the three weeks at issue. The record fails to show that claimant did any work seeking activities beyond remaining in contact with his regular employer and working when the employer had work available to him. We must therefore conclude that claimant did not actively seek work during the weeks at issue, and he was not eligible to receive benefits during those weeks.

**DECISION:** Hearing Decision 17-UI-81053 is affirmed.

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

**DATE of Service:** May 16, 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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