

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0522

Affirmed
Ineligible Weeks 52-16 to 2-17

PROCEDURAL HISTORY: On March 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 112419) concluding that failed to actively search for work from December 25, 2016 through January 14, 2017 (weeks 52-16 through 2-17). Claimant filed a timely request for hearing. On April 13, 2017, ALJ S. Lee conducted a hearing, and on April 20, 2017, issued Hearing Decision 17-UI-81454, affirming the administrative decision. On May 2, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 21, 2016, claimant's regular employer, New Reynolds Electric, told claimant that he was being laid off from his job as an electrician due to inclement weather. The employer told claimant he would return to work as soon as weather permitted.

(2) On December 22, 2016, claimant filed an initial claim for unemployment benefits. A weekly benefit amount of \$590 was established.

(3) Claimant claimed benefits for weeks 52-16 through 2017 (December 25, 2016 through January 14, 2017), the weeks at issue. Claimant was given waiting week credit for week 1-17, and was paid benefits for weeks 1-17 and 2-17.

(4) During the weeks at issue, claimant remained in contact with New Reynolds Electric, but performed no other work search activities.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant was ineligible for benefits for weeks 52-16 through 2-17.

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).

Here, on the date the employer laid him off, the employer told claimant he would return to work as soon as weather permitted. Because claimant was given no date by which he was expected to return to work, he did not qualify for the temporary layoff exception to the work search requirements in OAR 471-030-0036(5)(b)(A). Claimant did not perform the number or type of work seeking activities required by law and therefore, did not actively search for work during the weeks at issue. Accordingly, claimant is ineligible to receive unemployment benefits for weeks 12-16 through 2-17.

DECISION: Hearing Decision 17-UI-81454 is affirmed.

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

DATE of Service: May 19, 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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