

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0534

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 18, 2016 to January 14, 2017 (decision # 134131). Claimant filed a timely request for hearing. On April 25, 2017, ALJ Murdock conducted a hearing, and on April 27, 2017 issued Hearing Decision 17-UI-82024, affirming the Department's decision. On May 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 14, 2016, claimant's regular employer notified him that it did not have full time work available for him. The employer planned to return claimant to regular employment in "one month." Audio recording at ~ 12:50.

(2) Claimant filed weekly claims for unemployment insurance benefits each week from December 18, 2016 to January 14, 2017 (weeks 51-16 to 2-17), the weeks at issue. Claimant maintained contact with his regular employer throughout the weeks at issue and was on-call. Each week, the employer had one day of work available for claimant, and claimant worked as needed. Claimant did not perform other work seeking activities during the weeks at issue.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant is ineligible for benefits because he failed to actively seek work from December 18, 2016 to January 14, 2017.

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).

For the temporary layoff exception to apply, claimant must have been laid off work and given a “date” to return to regular work by the employer that was within four weeks of the layoff date. The record shows claimant was put on an on-call status rather than being laid off. It also shows that claimant was not given a date to return to work. Although claimant reported to the Department that he was given the date Sunday, January 15, 2017 and testified that the employer gave him the date Saturday, January 14, 2017, he also said that he would not have returned to work on a weekend that time of year and that he was told by the employer he would return to work in “one month” and determined that since he was laid off on December 14 he would return to work around January 14. Considering claimant’s testimony as a whole, we find that it is more likely than not that the employer did not give claimant the date of January 14 or January 15 as a return to work date. We find it more plausible that the employer told claimant he would be returned to work in one month, which, for purposes of applying the temporary layoff exception to the work seeking requirement, is not considered a “date.” Even if we concluded that it was, or concluded that the employer had actually given claimant the date January 14 or January 15 to return to work, the temporary layoff exception to the work seeking requirement would still not apply to claimant’s situation because January 14 and January 15 are more than four weeks past the date claimant was laid off work.

For each of those reasons, considered independently or together, claimant’s circumstances do not qualify him for the temporary layoff exception to the work seeking requirement. Claimant was, therefore, required to perform five work seeking activities every week as a condition of receiving unemployment insurance benefits during the weeks at issue. The record shows that claimant did not perform any activities beyond maintaining contact with his regular employer and working when needed, which amounts to fewer than five activities. Accordingly, claimant did not actively seek work as required and he is not eligible for benefits during the weeks at issue.

DECISION: Hearing Decision 17-UI-82024 is affirmed.

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

DATE of Service: May 22, 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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