

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0570**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On March 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of January 29, 2017 through February 11, 2017 and February 19, 2017 through February 25, 2017 (decision # 124342). Claimant filed a timely request for hearing. On April 28, 2017, ALJ Frank conducted a hearing, and on May 3, 2017 issued Hearing Decision 17-UI-82434, affirming the Department's decision. On May 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On or about November 27, 2016, claimant's regular employer, Jeld-Wen, notified claimant that her hours were going to be reduced. On November 30, 2016, claimant filed a claim for unemployment benefits. Claimant thereafter made claims for weekly benefits for the weeks of November 27 through December 10, 2016 and December 18 through December 31, 2016.<sup>1</sup> When claimant filed these weekly claims, she reported that she had been temporarily laid off and did not list any work seeking activities other than contacting her regular employer, Jeld-Wen. Claimant did not claim benefits for the weeks of January 1, 2017 through January 28, 2017.

(2) On January 10, 2017, the Department mailed a letter to claimant notifying her that she had not been entitled to take advantage of the exemption from work seeking requirements that was available to claimants on temporary layoff because Jeld-Wen had not laid her off – it had merely reduced her hours. The letter stated in darkened and underlined type, “You are not considered temporarily laid off if \*\*\* you are still working [for your regular employer] and your hours were simply reduced.” Audio at ~5:12.

<sup>1</sup> We take notice of these facts, which are 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, 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 facts will remain in the record at EAB.

(3) Sometime before February 7, 2017, Jeld-Wen notified claimant that her hours were going to be reduced again to less than full-time in the upcoming weeks. Jeld-Wen told claimant she should report for work on Sundays thereafter and her hours would be determined during each week. On February 7, 2017, claimant reopened her claim. At that time, a Department representative told claimant that she was not on a temporary layoff from Jeld-Wen since Jeld-Wen had only decreased her hours and she was required to perform an active work search to maintain her eligibility for benefits which included conducting at least five work seeking activities each week.

(4) Claimant claimed benefits for the weeks of January 29 through February 11, 2017 and February 19 through February 25, 2017 (weeks 05-17 through 06-17 and week 08-17), the weeks at issue. For each of the weeks at issue, claimant reported in her claim report to the Department that she was on a temporary layoff from Jeld-Wen. For each of the weeks at issue, claimant listed contacts with Jeld-Wen as her sole working seeking activity. For week 05-17, claimant reported that she worked 25 hours for Jeld-Wen and earned \$472.25. For week 06-17, claimant reported that she worked 25 hours for Jeld-Wen and earned \$472.75. For week 07-17, claimant reported that she worked 32 hours for Jeld-Wen and earned more than her weekly benefit amount so she was not paid benefits for that week. For week 08-17, claimant reported that she worked 25 hours for Jeld-Wen and earned \$472.25.

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work during weeks 05-17, 06-17 and 08-17 and is not eligible to receive benefits during 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 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).

Claimant did not dispute at hearing that Jeld-Wen employed her during the weeks at issue at temporarily reduced hours. Audio at ~11:16. Claimant did not contend that Jeld-Wen ever notified her that all work from it was going to cease for any period of time. Indeed, claimant expected to and did work some hours for the employer during the weeks at issue. A “temporary layoff” is a period of time in which there is a temporary cessation of all work and an individual who continues to work on-call or reduced hours for an employer is not an a “temporary layoff” within the meaning of OAR 471-030-0036(5)(b) and is not exempt from the general work seeking requirements of OAR 471-030-0036(5)(a). *See* UI Pub 195 (01-14) (if full time hours reduced but currently working some part-time hours, individual is not considered to be on a temporary layoff, is not exempt from general work seeking requirements and must comply with the work seeking requirements of OAR 471-030-0036(5)(a)); Memorandum from George Berriman, Manager UI Programs and Methods to All Staff Re: Active Work Search Requirements (claimants who continue to work some part-time hours are not considered to be on a temporary layoff and must perform a minimum of five work seeking activities each week to receive benefits for that

week); *Appeals Board Decision*, 2017-EAB-0369 (April 14, 2017) (claimant who worked between 5 and 13 hours during each of the weeks at issue not considered to be on a temporary layoff because all work with the employer had not ceased and claimant was therefore required to perform five work seeking activities to receive benefits in any week).

Claimant did not dispute that she performed no work seeking activities during the weeks at issue other than working for and maintaining contact with Jeld-Wen. Since claimant was not on a temporary layoff during the weeks at issue and no other exemptions were applicable to claimant's circumstances, claimant was required to perform five work seeking activities during each week that she claimed benefits. Claimant did not do so and she therefore is not eligible to receive benefits during the weeks at issue.

**DECISION:** Hearing Decision 17-UI-82434 is affirmed.

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

**DATE of Service: June 13, 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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