

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0581**

*Affirmed*  
*Ineligible Weeks 02-17 through 04-17*

**PROCEDURAL HISTORY:** On March 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 8 through January 28, 2017 (decision # 125659). Claimant filed a timely request for hearing. On April 25, 2017, ALJ Janzen conducted a hearing, and on April 26, 2017, issued Hearing Decision 17-UI-81866, affirming the Department's decision. On May 12, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Gosselin Construction, a construction contractor, employed claimant as a vehicle mechanic during the weeks at issue. Claimant's work was job and weather dependent.

(2) During the month of January 2017, weather restricted the number of jobs available and claimant's work was sporadic and limited. Consequently, on or about January 8, 2017, the employer's owner notified claimant that he would be off work indefinitely due to weather. The owner did not give claimant a date on which he would return to work.

(3) On January 10, 2017, claimant filed an initial claim for unemployment benefits. When filing his initial claim, claimant reported that he had been laid off work and did not report that the employer had given him a return to work date. He subsequently claimed and received either waiting week credit or benefits for the weeks including January 8 through January 28, 2017 (weeks 02-17 through 04-17), the weeks at issue. When filing each of his weekly claims, claimant reported to the Department that he was on a temporary layoff and did not report any work seeking activities other than contacting his employer.

(4) During the week including January 8 through January 14, 2017 (week 02-17), claimant only contacted his regular employer in seeking work and worked two half days for the employer.

(5) During the week including January 15 through January 21, 2017 (week 03-17), claimant contacted his regular employer and one other potential employer in seeking work but did not work that week.

(6) During the week including January 22 through January 28, 2017 (week 04-17), claimant contacted his regular employer and one potential employer in seeking work but did not work that week.

**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 week,<sup>1</sup> 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). Where, as here, the Department pays a claimant benefits or grants waiting week credit for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant was 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 testified that he contacted no employer other than his regular employer during the first week at issue (week 02-17) because he believed he was on a temporary layoff and did not have to. Audio Record ~ 15:30 to 16:00. During each of the weeks including January 15 through January 28, 2017 (weeks 03-17 and 04-17), claimant conducted only two work seeking activities. Because he did not perform the required five work seeking activities during each week claimed, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for those weeks.

**DECISION:** Hearing Decision 17-UI-81866 is affirmed.

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

**DATE of Service:** June 7, 2017

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<sup>1</sup> 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](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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