

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0584

Affirmed
Ineligible Weeks 51-16 through 1-17

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 December 18, 2016 to January 7, 2017 (decision # 64700). Claimant filed a timely request for hearing. On April 26, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-81843, affirming the Department's decision. On May 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 16, 2016, claimant's regular employer told claimant that he was going to be temporarily laid off work due to severe inclement weather. Claimant was told that he would probably return to work during the first week of January.

(2) On December 19, 2016, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims each week from December 18, 2016 through January 7, 2017 (weeks 51-16 through 1-17), the weeks at issue.

(3) During the weeks at issue claimant maintained regular contact with his regular employer, but did not otherwise perform any work seeking activities. On January 2, 2017, the employer notified claimant that he would return to work on January 9, 2017.

CONCLUSIONS AND REASONS: We agree that claimant did not actively seek work during the weeks at issue and is not eligible for benefits during that period.

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).

There is no factual dispute that claimant was laid off from his regular employment during the weeks in issue, nor is there any dispute that the layoff lasted less than four weeks and he was to be returned to full time work. In order to qualify for the temporary layoff exception to the requirement that claimants actively seek work as a condition of receiving benefits, however, the employer, as of the layoff date, must also have given the claimant a date to return to work. In this case, as of the layoff date the employer notified claimant only of the rough timeframe in which he might be returned to work. The employer did not give claimant a date to return to work until more than two weeks after the time claimant was laid off. Because the employer did not, as of the layoff date, give claimant a date to return to work, the temporary layoff exception to the actively seeking work requirement does not apply to claimant's situation.

Claimant was, therefore, required to actively seek work by performing at least five work seeking activities during each of the three weeks at issue as a condition of being eligible for benefits. Claimant's work seeking activities during the three weeks at issue were confined to maintaining contact with his regular employer; he did not perform any other work seeking activities during the weeks at issue, much less five activities each week. Claimant therefore did not actively seek work as required, and he is ineligible to receive unemployment insurance benefits during the weeks at issue.

DECISION: Hearing Decision 17-UI-81843 is affirmed.

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

DATE of Service: June 5, 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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