

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0593

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 11, 2016 through January 14, 2017 (decision # 113327). Claimant filed a timely request for hearing. On April 25, 2017, ALJ Amesbury conducted a hearing, and on April 27, 2017 issued Hearing Decision 17-UI-82016, affirming the Department's decision. On May 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 14, 2016, after claimant worked a full shift, claimant's regular employer told him he was being laid off and could expect to return to full time work by January 14, 2017. Claimant worked as a truck driver for his regular employer. He was not a member of a closed union.

(2) On December 16, 2016, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for December 11, 2016 through January 14, 2017 (weeks 50-16 through 2-17), the weeks at issue. Claimant reported that he was laid off work on December 15, 2016, and that he expected to return to work by January 15, 2017. The Department gave claimant waiting week credit for week 50-16 and initially paid claimant for weeks 51-16 through 2-17.

(3) During weeks 50-16 through 52-16, claimant worked two days each week for his regular employer, and did not engage in other work seeking activities.

(4) During weeks 1-17 through 2-17, winter weather restricted the number of jobs available and claimant's work was limited to part time work. Claimant did not engage in other work seeking activities those weeks.

CONCLUSIONS AND REASONS: We agree with the Department and the 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, with at least two of those being direct contact with an employer who might hire the individual.” *Id.* One exception to the work seeking requirements of OAR 471-030-0036(5)(a) is an individual on temporary layoff of four weeks or less. 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). The individual does not meet the requirements of OAR 471-030-0036(5)(b)(A) if the individual had not, as of the layoff date, been given a date to return to full time work or work for which remuneration is paid or payable that equals or exceeds the individual’s weekly benefit amount. OAR 471-030-0036(5)(b)(B). Where, as here, the Department pays or gives waiting week credit to a claimant for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department met its burden. The record shows that during the weeks at issue, although claimant’s employment was reduced to less than full time work, claimant was not put on a temporary layoff of four weeks or less, and that his regular employer had not given him a date that he would return to work that was within four weeks of his layoff date, December 15, 2016. Claimant’s regular employer told him he would return to work by January 14, 2017, but did not give claimant a specific date on which claimant would return to full time work, and, in addition, January 14 was more than four weeks from December 15, 2016. 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. It is undisputed that claimant did not conduct at least five work seeking activities during those weeks as required under OAR 471-030-0036(5)(a). Because he did not, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for the weeks at issue, weeks 50-16 through 2-17.

DECISION: Hearing Decision 17-UI-82016 is affirmed.

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

DATE of Service: June 8, 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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