

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0603

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 15, 2017 to February 25, 2017 (decision # 131620). Claimant filed a timely request for hearing. On May 4, 2017, ALJ Holmes-Swanson conducted a hearing, and on May 5, 2017 issued Hearing Decision 17-UI-82705, affirming the Department's decision. On May 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 16, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) On December 23, 2016, Aerotek, claimant's regular employer, notified claimant that he was being laid off from his work assignment and would be returned to work in two weeks, on January 9, 2017. On December 28, 2016, claimant restarted his unemployment insurance claim.

(3) Aerotek returned claimant to work on January 9, 2017 for two hours. Thereafter, the employer returned claimant to his layoff status for an indefinite period of time. The employer did not provide claimant with a new return to work date.

(4) Claimant filed weekly claims for benefits for the weeks of January 15, 2017 to February 25, 2017 (weeks 3-17 to 8-17), the weeks at issue. The Department paid claimant benefits for each of those weeks. Each week, claimant's only work seeking activity was to maintain regular contact with his regular employer.

CONCLUSIONS AND REASONS: We agree with the Department that claimant did not actively seek work and is ineligible for benefits.

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).

When claimant restarted his claim for benefits and claimed benefits for the weeks at issue, he mistakenly believed that the temporary layoff exception to the actively seeking work requirement applied to his situation and that he did not have to perform any work seeking activities beyond maintaining contact with his regular employer. While claimant might have been given a date to return to work at the time of his original layoff, prior to the weeks at issue his layoff period had been extended beyond that original date and he had no return to work date. Therefore, by the time of the weeks at issue in this case, he no longer qualified for the layoff exception and was required to actively seek work as a condition of being eligible for unemployment insurance benefits. In order to actively seek work, claimant must have performed five work seeking activities each week, including two direct contacts with employers who might hire him. In this case, however, claimant conducted only one activity per week, maintaining contact with his regular employer, which was four activities short of an active work search. He therefore did not actively seek work and is not eligible to receive the benefits the Department paid him for the weeks of January 15, 2017 to February 25, 2017 (weeks 3-17 to 8-17).

DECISION: Hearing Decision 17-UI-82705 is affirmed.

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

DATE of Service: June 6, 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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