

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0608

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 9, 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 February 18, 2017 (decision # 113704). Claimant filed a timely request for hearing. On May 3, 2017, ALJ Janzen conducted a hearing, and on May 4, 2017 issued Hearing Decision 17-UI-82599, concluding claimant did not actively seek work from December 18, 2016 to January 28, 2017, but did actively seek work from January 29, 2017 to February 18, 2017. On May 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant actively sought work, and was eligible for benefits from January 29, 2017 to February 18, 2017, are **adopted**.

FINDINGS OF FACT: (1) On December 9, 2016, Diamond Peak Construction, claimant's regular employer, laid claimant off work. The employer told claimant that it anticipated returning claimant to work in about a month. The employer did not give claimant a date to return to work.

(2) On December 23, 2016, claimant filed an initial claim for benefits. He filed weekly claims for the weeks of December 18, 2016 to January 28, 2017 (weeks 51-16 to 4-17), the weeks at issue. The Department paid claimant for each of those weeks.

(3) During each of the weeks at issue, claimant sought work by contacting his regular employer. Between December 18, 2016 and January 14, 2017 (weeks 51-16 to 2-17), claimant did not otherwise seek work. Between January 15, 2017 and January 28, 2017 (weeks 3-17 to 4-17), claimant also sought work by contacting another construction company but did not otherwise seek work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work, and is not eligible to receive benefits, from December 18, 2016 to January 28, 2017.

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 filed his initial claim for benefits and claimed benefits for the weeks at issue, he was on a temporary layoff from his regular employer and mistakenly believed that the temporary layoff exception to the actively seeking work requirement applied to his situation. In his written argument, claimant wrote that although he did not receive a date to return to work, his regular employer gave him the best time table they had for his return to work and "the spirit of my layoff is exactly . . . what unemployment insurance is for." Claimant's argument is understandable; however, the Department has established its policy on temporary layoffs through its administrative rule, which provides that unless, among other things, claimants have been given "a date" to return to work at the time of the original layoff, claimants must actively seek work as a condition of being eligible for benefits. Because, as claimant testified at the hearing and acknowledged in his argument, he did not have a date to return to work, the temporary layoff exception to the work search requirement cannot apply to claimant's circumstances. Claimant was, therefore, required to actively seek work during each of the weeks at issue by performing five work seeking activities each week, or he may not be eligible for benefits for those weeks. In this case, claimant performed no more than two work seeking activities each week. We must therefore conclude that claimant did not actively seek work during the weeks at issue, and he is not eligible to receive benefits between December 18, 2016 to January 28, 2017 (weeks 51-16 to 4-17).

DECISION: Hearing Decision 17-UI-82599 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, 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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