

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0621**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On March 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from February 5 through March 25, 2017 (decision # 104704). Claimant filed a timely request for hearing. On April 26, 2017, ALJ Snyder conducted a hearing, and on May 3, 2017 issued Hearing Decision 17-UI-82478, affirming the Department's decision. On May 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the weeks from February 5 through March 25, 2017 (weeks 6-17 through 12-17), the weeks at issue.

(2) During week 6-17, on February 8, 2017, claimant worked for his regular employer and was temporarily laid off from work, effective February 9, 2017. The employer gave claimant a return to work date during week 7-17, on February 13, 2017.

(3) During week 7-17, claimant returned to work for his regular employer. Claimant worked February 13 and 14, 2017. Claimant was temporarily laid off from work, effective February 15, 2017, and his regular employer gave him a return to work day during week 8-17, on February 22, 2017.

(4) During week 8-17, claimant returned to work for his regular employer. Claimant worked February 22, 2017. Claimant was temporarily laid off from work, effective February 23, 2017, and his regular employer gave him a return to work day during week 9-17, on February 27, 2017.

(5) During week 9-17, claimant returned to work for his regular employer. Claimant was temporarily laid off from work during that week and his regular employer gave him a return to work day that occurred during week 10-17.

(6) During week 10-17, claimant returned to work for his regular employer. Claimant was temporarily laid off from work during that week and his regular employer gave him a return to work day that occurred during week 11-17.

(7) During week 11-17, claimant returned to work for his regular employer. Claimant was temporarily laid off from work during that week and his regular employer gave him a return to work day that occurred during week 12-17.

(8) During week 12-17, claimant returned to work for his regular employer. Claimant was temporarily laid off from work during that week and his regular employer gave him a return to work day that occurred during week 13-17.

(9) Claimant's regular employer did not tell claimant he would return to full time work any time it gave claimant a new return to work date. Claimant worked part time during each week at issue. Claimant did not return to full time work until week 16-17 (April 16 through 22, 2017).

(10) Claimant's weekly benefit amount during the weeks at issue was \$436.<sup>1</sup> Claimant's remuneration was \$395 for each of weeks 6-17, 7-17, 9-17 and 11-17. Claimant's remuneration was \$131 for week 8-17, \$263 for week 10-17, and \$354 for week 12-17.<sup>2</sup>

(11) Claimant remained in contact with his regular employer during the weeks at issue and was capable of accepting and reporting for any suitable work with his regular employer during all the weeks at issue. Claimant did not engage in other work seeking activities during the weeks at issue.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must 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 few 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.* Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job

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<sup>1</sup> EAB takes notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

<sup>2</sup> EAB takes notice of these facts, which are contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

placement web sites without responding to a posted job opening, and making direct contact with an employer. OAR 471-030-0036(5)(a)(A). “Direct contact with an employer” means, “making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer.” OAR 471-030-0036(5)(a)(B).

However, for an individual on a temporary layoff of four weeks or less with the individual’s regular employer, if the individual had, 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, such individual is actively seeking 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 temporary 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).

Here, as of the layoff date during each week at issue, claimant’s regular employer gave him a return to work date that was within four calendar weeks following the end of the week in which the temporary layoff occurred. However, the employer did not tell claimant he would be returned to *full time work* during any of the weeks at issue. Nor did claimant perform work during any week at issue for which remuneration was paid or payable that exceeded his weekly benefit amount of \$436. Thus, as of the layoff date given to claimant each week at issue, claimant had not been given a date to return to full time work or work for which remuneration was paid or payable that equaled or exceeded his weekly benefit amount. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A).

To be considered actively seeking work during the weeks at issue, claimant needed to comply with OAR 471-030-0036(5)(a), under which he was required to conduct at least five work seeking activities per week, with at least of those being direct contact with an employer who might hire him. Claimant did not comply with those requirements. He therefore did not actively seek work during the weeks at issue, and is not eligible for benefits for those weeks.

**DECISION:** Hearing Decision 17-UI-82478 is affirmed.

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

**DATE of Service:** June 13, 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](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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