

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0643

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from January 1 through 21, 2017 (decision # 105606). Claimant filed a timely request for hearing. On April 26, 2017, ALJ Wyatt conducted a hearing, and on May 4, 2017 issued Hearing Decision 17-UI-82581, affirming the Department's decision. On May 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from January 1 through 21, 2017 (weeks 01-17 through 03-17), the weeks at issue.

(2) On December 30, 2017, claimant worked for his regular employer, which informed claimant that he was being laid off, but that he would return to work no later than January 30, 2017.

(3) During the weeks at issue, claimant remained in contact with his regular employer and was capable of accepting and reporting for any suitable work with that employer. However, claimant did not perform any other work seeking activities.

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

In the present case, it is undisputed that claimant did not perform five work seeking activities during any of the weeks at issue. The remaining issue is whether claimant was excused from doing so under OAR 471-030-0036(5)(b)(A). Under OAR 471-030-0036(5)(b)(A), however, claimant must, as of the layoff date been given *date* to return to work. In being told that he would return to work *no later than* January 30, 2017, claimant was not given a date to return to work, but a time period within which he would return to work. Claimant therefore was not excused from performing five work seeking activities per week during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-82581 is affirmed.

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

DATE of Service: June 14, 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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