

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0654

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 1, 2017 to January 21, 2017, January 29, 2017 to February 11, 2017, and February 26, 2017 to March 4, 2017 (decision # 111631). Claimant filed a timely request for hearing. On May 11, 2017, ALJ Janzen conducted a hearing, and on May 12, 2017 issued Hearing Decision 17-UI-83223, affirming the Department's decision. On May 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant has worked for the same employer since 1999. He usually worked full time, but during adverse weather the employer reduced claimant's hours and claimant did not know from day to day whether the employer would need him to work or if work was available, for how many hours.

(2) Around January 2, 2017, the employer temporarily reduced claimant's hours because of adverse weather. The employer did not give claimant a date he was scheduled to return to work or tell him whether or when he would be returned to full-time work. The employer instead instructed claimant to call a recorded message line each Monday to see if he was needed at work that week.

(3) On January 2, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant filed weekly claims for benefits for weeks including January 1, 2017 to January 21, 2017 (weeks 1-17 to 3-17), January 29, 2017 to February 11, 2017 (weeks 5-17 to 6-17), and February 26, 2017 to March 4, 2017 (week 9-17), the weeks at issue.

(4) Claimant called the employer weekly, and worked reduced hours during each of the weeks at issue. Claimant did not contact other employers seeking work or perform 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 is therefore 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).

Claimant argued that he did not have to seek work during the weeks at issue because he was temporarily laid off work by and maintained contact with his regular employer. Claimant's situation did not qualify him for the temporary layoff exception, however. Assuming that claimant's temporary reduction in hours to an on-call, as-needed basis amounted to a layoff, the employer did not give claimant a date to return to full time work at the time of claimant's initial layoff; the employer instead merely told claimant to check weekly about the possibility of some amount of work. Claimant was therefore not excused from actively seeking work, and was required to conduct five work seeking activities during each of the weeks at issue as a condition of being eligible for unemployment benefits. Claimant's only work seeking activity was to maintain contact with his regular employer, which constitutes one work seeking activity. Because claimant did not conduct five work seeking activities each week, he did not actively seek work, and he is ineligible to receive unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-83223 is affirmed.

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

DATE of Service: June 15, 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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