

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0691

Affirmed
Ineligible Weeks 02-17 and 03-17

PROCEDURAL HISTORY: On March 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 8 through January 21, 2017 (decision # 84555). Claimant filed a timely request for hearing. On May 16, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-83525, affirming the Department's decision. On June 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Southfork Logging, LLC employed claimant as an equipment operator. Claimant's work was equipment and weather dependent.

(2) During the month of January 2017, weather and equipment difficulties restricted the number of jobs available to the employer and claimant's work was sporadic and limited. Consequently, on or about January 11, 2017, the employer's owner notified claimant that he would be off work indefinitely. The owner did not give claimant a date on which he would return to full-time work.

(3) On January 11, 2017, claimant filed an initial claim for unemployment benefits. When filing his initial claim, claimant reported that he had been laid off but did not report that the employer had given him a return to work date because the employer had not done so. He subsequently claimed and received benefits for the weeks including January 8 through January 21, 2017 (weeks 02-17 through 03-17), the weeks at issue. When filing each of his weekly claims, claimant reported to the Department that he was on a temporary layoff and did not report any work seeking activities other than contacting his regular employer.

(4) During the week of January 8 through January 14, 2017 (week 02-17), claimant's only work-seeking activity was to contact his regular employer to determine if he could return to work.

(5) During the week of January 15 through January 21, 2017 (week 03-17), claimant's only work-seeking activity was to contact his regular employer to determine if he could return to work.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant did not actively seek work during the weeks at issue and 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 week¹, 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)(February 23, 2014).

Where, as here, the Department pays a claimant benefits or grants waiting week credit for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department met its burden. The Department established that claimant was not put on a temporary layoff of four weeks or less, and that his regular employer had not given him a date on which he would return to work that was within four weeks of either his last day worked or a reported layoff date. Accordingly, under OAR 471-030-0036(5), to be eligible for benefits, claimant was required to perform a minimum of five work seeking activities per week, with at least two of those being direct contact with an employer who might hire him.

Claimant testified that he contacted no employer other than his regular employer during the weeks at issue because the employer's work was temporarily halted due to weather and equipment issues and he was expecting to be called back soon. Audio Record ~ 9:30 to 11:00. However, because he did not perform the required five work seeking activities per week, claimant did not actively seek work during the weeks at issue and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-83525 is affirmed.

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

DATE of Service: June 27, 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,

¹ Examples of work seeking activities include, but are not limited to registering for job placement services with the Department, attending job placement meetings sponsored by the Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with a potential employer. OAR 471-030-0036(5)(a)

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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