

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0694**

*Affirmed*  
*Ineligible Weeks 5-17 through 9-17*

**PROCEDURAL HISTORY:** On April 7, 2017, the Oregon Employment Department (the Department) served notice of an amended administrative decision (# 162522) concluding that claimant did not actively search for work from January 29 through March 4, 2017 (weeks 5-17 through 10-17). Claimant filed a timely request for hearing. On May 17, 2017, ALJ Meerdink conducted a hearing, and issued Hearing Decision 17-UI-83641, affirming the administrative decision. On June 6, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On January 29, 2017, claimant's regular employer told him that he and other employees would be working reduced hours for at least a month.

(2) Claimant claimed benefits for the period from January 29 through March 4, 2017 (weeks 5-17 through 9-17), the weeks at issue. When he filed claims for each of the weeks at issue, claimant indicated that he was on a temporary layoff.

(3) During each of the weeks at issue, claimant worked less than full time for his regular employer. Claimant remained in contact with his regular employer during the weeks at issue, but performed no other work seeking activities.

(4) In April 2017, claimant returned to full time work for the employer.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude that claimant did not actively seek work during weeks 5-17 through 9-17. He is ineligible to receive benefits during 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)(February 23, 2014).

During each of the weeks at issue, weeks 5-17 through 9-17 (January 29 through March 4, 2017), claimant worked reduced hours for his regular employer, *i.e.*, less than 40 hours per week. Audio recording at 20:26. Claimant’s employer never notified him that all work for it would cease for any period of time. Instead, it told him that after January 29, 2017, claimant and other employees would be working “short hours” for at least a month. Audio recording at 9:17. A “temporary layoff” is a period of time in which an employer has no work available for an employee.<sup>1</sup> An individual who continues to work reduced hours for an employer is not on a “temporary layoff” within the meaning of OAR 471-030-0036(5)(b), and is required to conduct an active work search during all weeks for which benefits are claimed. *See Appeals Board Decision, 2017-EAB-0369* (April 14, 2017) (claimant who worked between 5 and 13 hours during each of the weeks for which benefits were claimed is not considered to be on a temporary layoff and therefore not exempt from the work seeking requirements of OAR 471-030-0038(5)(a)). Because claimant failed to perform five work seeking activities during any of the weeks at issue, he is ineligible for benefits for those weeks.

**DECISION:** Hearing Decision 17-UI-83641 is affirmed.

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

**DATE of Service:** June 29, 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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<sup>1</sup> A relevant definition of “lay off” is “to cease to employ (a worker) often temporarily.” <https://www.merriam-webster.com/dictionary/lay%20off>.