

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0695

Affirmed
Ineligible Weeks 09-17 to 12-17

PROCEDURAL HISTORY: On April 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 125758) concluding that claimant failed to actively search for work from February 26 through March 25, 2017 (weeks 09-17 through 12-17). Claimant filed a timely request for hearing. On May 24, 2017, ALJ Meerdink conducted a hearing, and on May 25, 2017, issued Hearing Decision 17-UI-84177, affirming the administrative decision. On June 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on information received into evidence at the hearing.

FINDINGS OF FACT: (1) On January 11, 2017, claimant filed an initial claim for unemployment benefits. On February 28, 2017, claimant restarted his claim. He claimed benefits for the period February 26 through March 25, 2017 (weeks 09-17 through 12-17), the weeks at issue.

(2) During each of the weeks at issue, claimant worked less than full time hours for his regular employer because of the winter weather. Claimant contacted his regular employer daily to ask about available work, but performed no other work search activities.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant did not actively seek work during weeks 09-17 through 12-17. He is ineligible to receive 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)(February 23, 2014).

During each of the weeks at issue, weeks 09-17 through 12-17 (February 26 through March 25, 2017), claimant worked less than full time hours for his regular employer, but never stopped performing all work for his employer. A “temporary layoff” is a period of time in which an employer has no work available for an employee.¹ An individual who continues to work part time or 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)). Claimant was therefore not subject to the temporary layoff exception to the requirement he conduct an active work search. Because he performed no work seeking activities during any of the weeks at issue, he is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-84177 is affirmed.

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

DATE of Service: July 5, 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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¹ A relevant definition of “lay off” is “to cease to employ (a worker) often temporarily.” <https://www.merriam-webster.com/dictionary/lay%20off>.