

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0735

Affirmed
Ineligible Weeks 12-17 and 13-17

PROCEDURAL HISTORY: On April 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 123512) concluding that claimant failed to actively seek work from March 19 through April 1, 2017 (weeks 12-17 and 13-17). Claimant filed a timely request for hearing. On May 30, 2017, ALJ Shoemake conducted a hearing and issued Hearing Decision 17-UI-84457, affirming the administrative decision. On June 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 9, 2016, claimant filed an initial claim for unemployment benefits.

(2) On March 17, 2017, claimant's regular employer, Blue Mountain Lumber Products, told claimant that he was being laid off from his job as a resaw and forklift operator. Claimant was told he would return to work in four weeks.

(3) Also on March 17, 2017, claimant restarted his claim for unemployment benefits. Claimant claimed and was paid benefits for weeks 12-17 and 13-17 (March 19 through April 1, 2017), the weeks at issue.

(4) During the weeks at issue, claimant kept in contact with his regular employer but performed no other work seeking activities.

CONCLUSION 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 within four weeks of the date of layoff, 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 other than remaining in contact with his employer, claimant performed no work seeking activities during 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. At the time he was laid off, claimant was told that he would return to work in four weeks. "In four weeks" is not a date.¹ Claimant therefore was not excused from performing five work seeking activities during each of the weeks at issue. Because he failed to do so, he is ineligible to receive benefits for those weeks.

DECISION: Hearing Decision 17-UI-84457 is affirmed.

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

DATE of Service: July 12, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ Relevant definitions of "date" are [t]he day of the month or year as specified by a number," and "[a] particular day or year when a given event occurred or will occur." <https://en.oxforddictionaries.com/definition/date>.