

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0743

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from April 2, 2017 to April 15, 2017 (decision # 140643). Claimant filed a timely request for hearing. On June 7, 2017, ALJ Janzen conducted a hearing, and on June 8, 2017 issued Hearing Decision 17-UI-85188, affirming the Department's decision. On June 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant explained that he misunderstood the rules regarding the temporary layoff exception and thought the four-week period began with the date he filed for benefits and not the date of the layoff. Unfortunately, though, the laws and rules do not allow EAB to determine that claimant was eligible for benefits because he was mistaken about how the layoff rules affected him. Claimant also explained that he was only laid off work for three weeks, and asked for compassion in that he not be required to repay any overpayment resulting from this decision. Only claimant's eligibility for benefits is before EAB at this time. Unless and until the Department issues a separate administrative decision regarding the overpayment, and claimant appeals it, claimant must communicate with the Department directly to find out if he will be required to repay any overpaid benefits or if he is eligible for leniency, waiver or a compassionate repayment plan.

FINDINGS OF FACT: (1) On March 24, 2017, claimant's regular employer laid him off work due to a temporary reduction in business. Claimant's regular employer told him that the employer would return him to full time work in two to four weeks.

(2) On April 5, 2017, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for the weeks of April 2, 2017 to April 15, 2017 (weeks 14-17 to 15-17), the weeks at issue. The Department paid claimant benefits for both weeks.

(3) During the weeks at issue claimant's only work seeking activity was maintaining at least bi-weekly contact with his regular employer. Claimant knew he would be returning to work in less than four weeks and did not think he needed to seek work with other employers.

CONCLUSIONS AND REASONS: Claimant did not actively seek work from April 2, 2017 to April 15, 2017, and is therefore ineligible for 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).

The exception to the actively seeking work requirement for claimants laid off from their regular jobs only applies to certain kinds of layoffs. Specifically, the exception only applies if claimant was given a date to return to work. Relevant definitions of "date" include "the 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."¹ In this case, although claimant was told that his layoff was temporary and he knew he would be back to work in under four weeks, he was not given a "date" to return to work. Claimant suggested that he wrote the wrong date down and that was the cause of his ineligibility, but that is not the case. Claimant also suggested that because the total length of his layoff was fewer than four weeks he should nevertheless be eligible for benefits. Regardless of which date claimant wrote down or how long his layoff was, however, claimant's testimony established that he was not given a "date" to return to work. In the absence of a "date" – that is, a day of the month "as specified by a number" or "a particular day" – to return to work, he did not qualify for the layoff exception and was therefore required to perform five work seeking activities each week in order to be eligible for benefits. Claimant's only activity during each of the weeks at issue was maintaining at least bi-weekly contact with his regular employer, which does not amount to the required five activities per week. Claimant therefore did not actively seek work each week, and he is ineligible for benefits during the weeks at issue.

DECISION: Hearing Decision 17-UI-85188 is affirmed.

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

DATE of Service: July 10, 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

¹ <https://en.oxforddictionaries.com/definition/date>.

'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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