

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0811**

*Affirmed*  
*Ineligible ~ Overpaid*

**PROCEDURAL HISTORY:** On May 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from April 30 through May 13, 2017, and therefore was overpaid \$556 in benefits that he must repay to the Department (decision # 143001). Claimant filed a timely request for hearing. On June 28, 2017, ALJ M. Davis conducted a hearing and issued Hearing Decision 17-UI-86841, affirming the Department's decision. On July 5, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the weeks from April 30 through May 13, 2016 (weeks 18-17 and 19-17), the weeks at issue.

(2) On April 1, 2017, 2017 claimant filed an initial claim for benefits. His weekly benefit amount was \$278.

(3) On April 29, 2017, worked for his regular employer, and was informed that he was being temporarily laid off, effective Monday, May 1, 2017. On May 1, 2017, claimant was told that he would return to work sometime between May 21 and June 1, 2017.

(4) On May 8, 2017, claimant restarted his initial claim for benefits. At that time, claimant reported to the Department that he was on temporary layoff with his regular employer, but not that he had been given a date to return to work.

(5) During week 18-17, claimant remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer, but did not search for work with other employers. When claimant claimed benefits for week 18-17, he reported to the Department that he actively sought work that week. The Department paid claimant \$278 for week 18-17.

(6) On May 12, 2017, claimant reported to the Department that his regular employer told him he would "return within four weeks but did not have a specific date," and that he did not seek work because his

regular employer said he would be “back to work full time by the end of May or before.” Audio Record at 6:30-7:20.

(7) During week 19-17, claimant remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer, but did not search for work with other employers. When claimant claimed benefits for week 19-17, he reported to the Department that he actively sought work that week. The Department paid claimant \$278 for week 19-17.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue, and therefore is ineligible for benefits for those weeks.

**Eligibility.** 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). Where, as here, the Department initially pays a claimant benefits, the Department has the burden to establish by preponderance of evidence, that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In Hearing Decision 17-UI-86841, the ALJ found that claimant was temporarily laid off by his employer on April 29, 2017, and that on May 1, 2017, claimant learned from his regular employer that he would return to work on May 22, 2017.<sup>1</sup> We disagree with those findings. The record shows that claimant worked for the employer on Saturday, April 29, 2017, was informed that he was being laid off, and that the effective date of his layoff was, more likely than not, Monday, May 1, 2017. Audio Record at 4:55, 11:30-13:00. When claimant restarted his initial claim for benefits on May 8, 2017, however, he reported to the Department that he was on temporary layoff with his regular employer, but not that he had been given a date to return to work. On May 12, 2017, claimant reported to the Department that his regular employer told him he would “return within four weeks but did not have a specific date,” and that he did not seek work because his regular employer said he would be “back to work full time by the end of May or before.” At hearing, claimant testified that when he contacted his regular employer on May 1, 2017, his boss told him he would return to work “around” May 22 “pretty much.” Audio Record at 12:55-13:05.

The preponderance of evidence in the record therefore shows that on May 1, 2017, claimant likely was told that he would return to work sometime between May 21 and June 1, 2017, and not that he would return to work on May 22, 2017. Claimant therefore had been given a time period during which he would return to work, and not a date to return to work, as required under OAR 471-030-0036(5)(b)(A).

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<sup>1</sup> Hearing Decision 17-UI-86841 at 1-2.

Thus, to be considered actively seeking work during the weeks at issue, claimant was 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, as required under OAR 471-030-0036(5)(a). It is undisputed that claimant did not do so. We therefore conclude that claimant did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.

**Overpayment.** ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Because claimant did not actively seek work during the weeks at issue, he is not entitled to the \$556 in benefits he received for those weeks. Claimant received those benefits because he falsely stated to the Department that he actively sought work during the weeks at issue. Regardless of claimant's knowledge or intent in making that statement, he is liable to either repay the \$556 or have it deducted from any future benefits otherwise payable to him under ORS 657.

**DECISION:** Hearing Decision 17-UI-86841 is affirmed.

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

**DATE of Service: July 31, 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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