

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0816

Affirmed
Ineligible Weeks 01-17 through 04-17

PROCEDURAL HISTORY: On March 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 72425) concluding that claimant failed to actively seek work from January 1 through January 28, 2017 (weeks 01-17 through 04-17). Claimant filed a timely request for hearing. On June 20, 2017, ALJ M. Davis conducted a hearing and issued Hearing Decision 17-UI-86127, affirming the Department's decision. On July 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 31, 2016, claimant's regular employer, Protech Industries, told claimant he would be laid off. December 31 was the last day claimant worked before his layoff. During the first week of January 2017, the employer's owner told claimant he would return to work on February 1, 2017.

(2) On January 3, 2017, claimant filed an initial claim for unemployment insurance benefits online. When claimant filed his initial claim, he stated that his last day worked was December 31, 2016, and that he would be returning to work on February 10, 2017. He also checked a box to show that he believed he was on a temporary layoff with a regular employer.

(3) Claimant claimed benefits for weeks 01-17 through 04-17 (January 1 through January 28, 2017), the weeks at issue. Each week that claimant filed his claim for benefits, he certified that he was on a temporary layoff of four weeks or less and provided no work search information. Claimant had fewer than five work search activities during each week at issue. He checked with his regular employer each week. The Department gave claimant waiting week credit for the first week at issue or paid benefits for each of the other weeks at issue.

(4) On February 1, 2017, claimant returned to work.

(5) On February 9, 2017, the Department mailed claimant a letter requesting work search information for the weeks at issue and an explanation for why he did not seek work. Claimant did not provide work search information and thereafter the Department denied benefits for the weeks at issue.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant failed to actively search for work during weeks 01-17 through 04-17 and 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, 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).

The Department seeks to deny benefits retroactively for the weeks at issue because claimant did not actively seek work during those weeks. Where, as here, the Department pays a claimant benefits for weeks claimed, the Department has the burden to establish by a preponderance of evidence that the claimant is not entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department met its burden.

The record shows that on December 31, 2016, claimant’s employer notified him that he would be laid off beginning January 1, 2017. Within the next week, the owner told him he would return to work on February 1, 2017. The date claimant first missed work, January 1, is considered the effective date of his layoff. Because claimant’s return to work date, February 1, was more than 28 days from the date of layoff, claimant did not qualify for the work search requirements permitted for an individual on a temporary layoff provided under OAR 471-030-0036(5)(b), and was required to conduct an active work search. Claimant also does not qualify for the work search requirements permitted by OAR 471-030-0036(5)(b) because his regular employer did not give him a return to work date *as of his layoff date*, but, rather, several days later. Accordingly, because claimant performed less than five work search activities per week as required by OAR 471-030-0036(5)(a), he did not actively search for work and is therefore ineligible to receive benefits for the weeks at issue.

DECISION: Hearing Decision 17-UI-86127 is affirmed.

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

DATE of Service: August 2, 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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