

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0819

Affirmed
Ineligible

PROCEDURAL HISTORY: On February 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of January 1, 2017 through February 4, 2017 (decision # 73913). Claimant filed a timely request for hearing. On June 27, 2017, ALJ Shoemake conducted a hearing, and on June 28, 2017 issued Hearing Decision 17-UI-86747, affirming the Department's decision. On July 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information not offered into evidence during the hearing. Claimant did not explain why he failed to present this information at the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the new information that claimant sought to present by way of his written argument when reaching this decision.

FINDINGS OF FACT: (1) On December 6, 2016, claimant filed an initial claim for benefits. As of December 30, 2016, claimant was working full-time for J & L Restoration as the leader of a painting crew. Claimant usually worked for J & L Mondays through Fridays.

(2) On Friday, December 30, 2017, claimant's supervisor told claimant he was temporarily laid off beginning on Monday, January 2, 2017 due to the weather. The supervisor told claimant he would return to work "shortly, by the end of the month [i.e., January 2017]." Audio at ~13:13. The supervisor did not give claimant a particular date by which he could expect to return to work.

(3) Claimant claimed and was paid benefits for the weeks of January 1, 2017 through January 28, 2017 (weeks 01-17 through 04-17). Claimant claimed and was not paid benefits for the week of January 29, 2017 through February 4, 2017 (week 05-17). Weeks 01-17 through 05-17 are the weeks at issue.

(4) During the weeks at issue, claimant stated in his weekly claim reports that he was on a temporary layoff from J & L because his supervisor had told him he could expect to return to work by the end of January 2017, which was within a month of the day he was laid off. During the weeks at issue, claimant

did not report any work seeking activities in his weekly claim reports other than remaining in contact with the J & L. In a conversation with a Department representative, claimant stated he had not looked for any work with any employers other than J & L during the weeks at issue. When claimant spoke with a representative of J & L during the weeks at issue, he was told that he was going to return to work “as soon as the weather clears up.” Audio at ~17:50.

(5) On February 17, 2017, claimant completed a document that the Department sent to him asking about his layoff by J & L. In his response, claimant stated that J & L told him he would return within four weeks of his layoff but did not give him a specific date by which he would return. Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue and is not eligible 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).

Claimant did not dispute that J & L did not give him an exact and specific date by which he could expect to return to work when he was laid off. Accordingly, the first prong of the test to show that claimant was, under OAR 471-030-0036(5)(b), exempt from the general work seeking requirements of OAR 471-030-0036(5)(a) is not satisfied, since he did not know the exact date when he could expect to return to work, or whether it would be no more than four weeks from the date of his layoff. As well, by claimant's own account, the employer told him only that he could expect to return to work by the end of January 2017. Audio at ~13:13. Even were we to disregard the plain language of OAR 471-030-0036(5)(b) and accept the employer's general statement as setting forth an ending date for the layoff of January 31, 2017, at the latest, this would make the layoff period as long as 29 days, or four weeks and one day, from the date that claimant was laid off.¹ As such, the potential length of claimant's layoff would fall outside of that for which the work seeking exemption of OAR 471-030-0036(5)(b) is applicable. Claimant therefore was required under OAR 471-030-0036(5)(a) to perform five work seeking activities to remain eligible to receive benefits for each of those weeks. It is undisputed that claimant did not. For that reason, claimant did not actively seek work during the weeks at issue, and is ineligible to receive benefits for those weeks.

DECISION: Hearing Decision 17-UI-86747 is affirmed.

¹ The first effective day of claimant's lay off, which was the first day he missed work due to the layoff, was January 2, 2017. The number of days between January 2 and January 31 is 29 days, which is four weeks and one day.

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

DATE of Service: August 1, 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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