

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0820

Affirmed
Ineligible Weeks 52-16 through 04-17

PROCEDURAL HISTORY: On March 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 25, 2016 through January 28, 2017 (decision # 111724). Claimant filed a timely request for hearing. On June 27, 2017, ALJ L. Lee conducted a hearing, and on June 30, 2017, issued Hearing Decision 17-UI-87055, 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) Wild Honey Excavation, Inc. employed claimant as a heavy equipment operator during the two years prior to and during the weeks at issue.

(2) On November 4, 2016, claimant filed an initial claim for unemployment insurance benefits.¹ At around that time, claimant was advised by a Department representative in the Bend Field Office that he did not need to look for other work during a temporary layoff if he had been a full-time employee and had been given a date for return to full-time work within 30 days or four weeks of layoff.

(3) During the months of December 2016 through January 2017, eastern Oregon experienced severe winter weather. On December 18, 2016, the employer notified claimant that he was being laid off from full time work, effective December 19, due to the weather but would return to full-time work on January 30, 2017.

(4) Claimant claimed and was paid benefits for the weeks including December 25, 2016 through January 28, 2017 (weeks 52-16 through 04-17). These are the weeks at issue. When claimant began his layoff in December, he mistakenly believed he was on a temporary layoff of less than 30 days or four weeks

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

because he miscounted the number of days and weeks he would be off work until January 30, 2017. Consequently, when filing each of his weekly claims, claimant reported to the Department that he was on a temporary layoff and did not report any work seeking activities other than contacting his employer because he did not perform any other work seeking activities.

(5) Claimant returned to full-time work on January 30, 2017.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not actively seek work during weeks including December 25, 2016 through January 28, 2017 (weeks 52-16 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)(A)(February 23, 2014).

At hearing, claimant explained that on December 18, 2016, his employer told him he was being laid off, effective December 19, 2016, but that he would return to full-time work on January 30, 2017. Audio Record ~ 34:50 to 37:30. He also explained that a Department representative at the Bend Field Office told him that he did not need to look for work during a temporary layoff if he was a full-time employee and had been given a date on which he would return to full-time work that was within 30 days or four weeks of the layoff. Audio Record ~ 24:30 to 27:45; 38:00 to 40:30. Although that information, as he related it, was inconsistent with the rule, it does not matter here because claimant's temporary layoff began on December 19 and was not scheduled to end until January 30, 2017, 42 days later. Accordingly, claimant's temporary layoff was scheduled to last longer than 28, or even 30, days from the date of his layoff. Therefore, claimant did not qualify for the modified work search requirements permitted for an individual on a temporary layoff under OAR 471-030-0036(5)(b)(A).

On these facts, to be eligible for benefits, claimant was required to seek work by performing at least five work-seeking activities per week, with at least two of those work seeking activities being direct contact with an employer which might hire him, during each of the weeks at issue. Because claimant only contacted his employer each week, he did not actively seek work in accordance with OAR 471-030-0036(5)(a) and, therefore, is ineligible for benefits for the weeks including December 25, 2016 through January 28, 2017 (weeks 52-16 through 04-17).

DECISION: Hearing Decision 17-UI-87055 is affirmed.

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

DATE of Service: August 8, 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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