

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0842

Affirmed
Ineligible Week 01-17

PROCEDURAL HISTORY: On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the week including January 1 through January 7, 2017 (week 01-17) (decision # 115201). Claimant filed a timely request for hearing. On July 6, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-87397, affirming the Department's decision. On July 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Graham Landscape and Design employed claimant as an executive assistant from 2014 through the week at issue.

(2) During the months of December 2016 and January 2017, severe weather caused power outages in the employer's market area, including its own office. Due to the weather conditions, the employer notified claimant that she would be laid off from full time work until weather conditions improved and the electrical power to its office was restored. The employer did not give claimant a date on which she would return to full time work.

(3) On December 16, 2016, claimant filed an initial claim for unemployment insurance benefits with the Department. Claimant claimed and was paid benefits for the week including January 1 through January 7, 2017 (week 01-17), the week at issue.

(4) When claimant claimed benefits for the week at issue, she checked a box certifying that she was on a temporary layoff with her regular employer and that she was returning to work within 28 days of her layoff date. At the time she filed her weekly claim, she did not report a return to work date or any work search activities for that week because she did not perform any other than maintaining contact with her regular employer. Claimant returned to work after the week at issue.

(5) On February 15, 2017, the Department sent claimant a letter requesting additional information about whether the employer ever gave her a return to work date and any work searches in which she may have engaged. Claimant did not respond to the Department's letter.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not actively seek work during the week at issue and is ineligible for benefits for that week.

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).

The Department retroactively denied benefits for the week at issue after concluding claimant did not actively seek work during the week. Where, as here, the Department initially pays a claimant benefits for any 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.

It is undisputed that when claimant filed her weekly claim, she certified to the Department that she was on "temporary layoff" and had been given a date to return to full-time work within 28 days of her layoff date. However, at hearing, claimant admitted that her layoff was due to weather and a power outage and would last at least until the power was restored. Audio Record ~ 08:15 to 10:15. For purposes of determining whether or not a claimant must seek work during a layoff, however, it does not matter if the layoff is four weeks or less unless the individual was also given a date to return to full time work at the time of the layoff. Because claimant's return to work date was weather and power dependent and no return to work date was given to her when she was laid off, 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). Therefore, to be eligible for benefits, she was required to seek work by performing at least five work-seeking activities each week, with at least two of those work seeking activities being direct contact with an employer which might hire her.

Because, on this record, claimant failed to engage in the required number and nature of work search activities during those weeks at issue, the Department established that claimant did not actively seek work in accordance with OAR 471-030-0036(5)(a) and, therefore, is ineligible for benefits for the week including January 1 through January 7, 2017 (week 01-17).

DECISION: Hearing Decision 17-UI-87397 is affirmed.

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

DATE of Service: August 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 ‘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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