

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0862

Affirmed
Ineligible Weeks 50-16 through 01-17

PROCEDURAL HISTORY: On February 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 91740) concluding that claimant did not actively search for work from December 11, 2016 through January 7, 2017 (weeks 50-16 through 01-17). Claimant filed a timely request for hearing. On June 28, 2017, ALJ Messecar conducted a hearing, and on July 6, 2017, issued Hearing Decision 17-UI-87281, affirming the administrative decision. On July 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On or about December 10, 2016, claimant's employer, Barkeley's Contracting, told claimant that he would be laid off from his job as carpenter's helper for four weeks.

(2) On December 11, 2016, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks When claimant filed his initial claim, he indicated that he was on a temporary layoff from a regular employer.

(3) Claimant claimed benefits for weeks 50-16 through 01-17 (December 11, 2016 through January 7, 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 maintained regular contact with his employer, but performed no other work search activities during the weeks at issue.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant failed to actively search for work during weeks 50-16 through 01-17 and is ineligible 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 within four weeks or less, 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).

On the date the employer laid claimant off, the employer told claimant he would return to work in four weeks. Under OAR 471-030-0036(5)(b)(A), to qualify for the temporary layoff exemption from work seeking activities, claimant must, as of the layoff date, been given a *date* to return to work. “In four weeks” is not a date.¹ Claimant was therefore required to perform five work seeking activities during each of the weeks at issue. Because he failed to do so, he is ineligible to receive benefits for those weeks.

DECISION: Hearing Decision 17-UI-87281 is affirmed.

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

DATE of Service: August 11, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ Relevant definitions of “date” are [t]he day of the month or year as specified by a number,” and “[a] particular day or year when a given event occurred or will occur.” <https://en.oxforddictionaries.com/definition/date>.