

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0866**

*Modified*  
*Eligible Week 4-17*  
*Ineligible Weeks 5-17 through 7-17*

**PROCEDURAL HISTORY:** On March 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision #141716) concluding that claimant failed to actively search for work from January 22 through February 18, 2017 (weeks 4-17 through 7-17). Claimant filed a timely request for hearing. On July 11, 2017, ALJ Shoemake conducted a hearing, and on July 13, 2017, issued Hearing Decision 17-UI-87915, affirming the administrative decision. On July 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On or about January 27, 2017, claimant's regular employer, Les Schwab, told him that that he was laid off, and would return to work within four weeks.

(2) On January 27, 2017, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks 4-17 through 7-17 (January 22 through February 18, 2017), the weeks at issue. Each week that he claimed benefits, claimant indicated that he was on a temporary layoff.

(3) During week 4-17, claimant worked 3 days for Les Schwab. Audio recording at 33:14. Also during week 4-17, he remained in contact with Les Schwab about additional work opportunities and contacted Wellspring, another employer. Audio recording at 25:16.<sup>1</sup>

(4) During week 5-17, claimant worked five hours for Les Schwab. During week 6-17, he performed no work for Les Schwab. During week 7-17, claimant worked 16 hours for Les Schwab.

(5) During each of weeks 5-17, 6-17 and 7-17, claimant made direct contacts with two employers.

<sup>1</sup> Claimant earned \$420 during week 4-17. His weekly benefit amount was \$541. We take official notice of these facts, which are contained in Department records, under OAR 471-041-0090(3). Any party that objects to notice of these facts must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, the noticed facts will remain part of the record.

**CONCLUSION AND REASONS:** We conclude that claimant actively sought work during week 4-17, but did not actively seek work during weeks 5-17 through 7-17.

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 him would return to work within 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. “Within four weeks” is not a date.<sup>2</sup> Claimant was therefore required to perform five work seeking activities during each of the weeks at issue.

During week 4-17, claimant worked three days for Les Schwab, his regular employer. Also during this week, claimant remained in contact with Les Schwab about additional work opportunities and contacted Wellspring, another employer. OAR 471-030-0036(5)(e)(A) provides that for an individual filing for the first week of an initial claim, who worked less than full time and who was paid remuneration for his work that was less than his weekly benefit amount, each day the individual worked will be considered a direct employer contact. Applying this rule, we conclude that claimant made five direct employer contacts during week 4-17. Because he performed five work seeking activities, he is eligible to receive benefits for this week.

During the remaining weeks at issue, weeks 5-17 through 7-17, claimant failed to conduct five work seeking activities, because he only contacted two employers during each of these weeks, in addition to working for Les Schwab during weeks 5-17 and 7-17.<sup>3</sup> Claimant is therefore ineligible to receive benefits for weeks 5-17 through 7-17.

**DECISION:** Hearing Decision 17-UI-87915 is modified, as outlined above.

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

**DATE of Service:** August 14, 2017

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<sup>2</sup> 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>.

<sup>3</sup> We conclude that work performed for Les Schwab during these weeks constitutes “direct contact with an employer who might hire the individual” under OAR 471-030-0036(5)(a).

**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](http://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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