

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0871

Affirmed
Ineligible Weeks 5-17 to 7-17

PROCEDURAL HISTORY: On April 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 29, 2017 to February 18, 2017 (decision # 145357). Claimant filed a timely request for hearing. On July 11, 2017, ALJ Micheletti conducted a hearing, and on July 17, 2017 issued Hearing Decision 17-UI-88114, affirming the Department's decision. On July 20, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On approximately January 30, 2017, claimant's regular employer, Nelson Brothers Trucking, laid claimant off work due to a lack of work. Although the employer told claimant the layoff was temporary, and it could last a couple of weeks or a few weeks, the employer did not give claimant a return to work date at the time of her layoff. Audio recording at ~ 21:35.

(2) On February 1, 2017, claimant filed an initial claim for unemployment insurance benefits. The Department instructed claimant on several occasions that she was required to conduct five work seeking activities each week, including two direct employer contacts.

(3) Claimant filed weekly claims for benefits from January 29, 2017 to February 18, 2017 (weeks 5-17 to 7-17), the weeks at issue. Claimant worked as a caregiver two days a week during each of the weeks at issue, but she did not otherwise perform any work seeking activities.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work from January 29, 2017 to February 18, 2017 (weeks 5-17 to 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, 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).

Although claimant was temporarily laid off work by her regular employer during the weeks at issue, the temporary layoff exception to the work seeking requirement can only apply if, among other things, she was given a "date" to return to full time work. A "date" is defined in relevant part as a "day of the month or year as specified by a number" or "[a] particular day or year when a given event occurred or will occur." See <https://en.oxforddictionaries.com/definition/date>. Claimant was not given a "date" upon which the employer would return her to work, she was instead told that she would return in couple of weeks or a few weeks. Without a "date," the exception to the work seeking requirement does not apply to claimant's situation, and she was therefore required to conduct five work seeking activities each week, including two direct employer contacts each week, as a condition of being eligible to receive unemployment insurance benefits. Claimant did not seek work beyond performing part time work as a caregiver and presumably maintaining contact with her regular employer, which would amount to, at most, three activities each week, which is not enough to satisfy the work seeking requirements. Claimant is therefore ineligible for benefits for the weeks at issue because she did not "actively seek work" as required.

DECISION: Hearing Decision 17-UI-88114 is affirmed.

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

DATE of Service: August 15, 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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