

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0932

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from January 8 through February 11, 2017 (decision # 142744). Claimant filed a timely request for hearing. On July 11, 2017, ALJ M. Davis conducted a hearing, and on July 12, 2017 issued Hearing Decision 17-UI-87757, affirming the Department's decision. On August 1, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from January 8 through February 11, 2017 (weeks 2-17 through 6-17), the weeks at issue.

(2) On January 1, 2017, claimant's regular employer notified him that he was being temporarily laid off, effective January 2, 2017. Claimant was not give a date to return to work at that time.

(3) In mid-January 2017, claimant's regular employer notified claimant that he would return to work on February 16, 2017. Claimant returned to work for his regular employer on that date.

(4) During the weeks at issue, claimant remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer. However, claimant did not conduct five or more work seeking activities during any of the weeks at issue.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue, and therefore 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).

In the present case, claimant did not meet the requirements set forth in OAR 471-030-0036(5)(b)(A) because, as of his layoff date of January 2, 2017, he had not been given a date to return to work, and because his temporary layoff exceeded four weeks. Thus, to be eligible for benefits during the weeks at issue, claimant was required under OAR 471-030-0036(5)(a) 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 him. At hearing, claimant did not assert or present evidence showing that he complied with that requirement during any of the weeks at issue.

Claimant therefore did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-87757 is affirmed.

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

DATE of Service: August 18, 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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