

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0937**

*Affirmed*  
*Ineligible Weeks 19-17 through 21-17*  
*Overpaid*

**PROCEDURAL HISTORY:** On June 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 140340) concluding that claimant did not actively search for work from May 7 through May 27, 2017 (weeks 19-17 through 21-17), and that claimant was overpaid unemployment benefits in the amount of \$522 during those weeks. Claimant filed a timely request for hearing. On July 19, 2017, ALJ Lohr conducted a hearing, and on July 20, 2017, issued Hearing Decision 17-UI-88501, affirming the administrative decision. On August 4, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

At the July 19 hearing, ALJ Lohr admitted the schedule of adjustments attached to decision # 140340 into the record as Exhibit 1. On this record, Exhibit 1 was not marked. Accordingly, we have marked the schedule of adjustments as Exhibit 1.

**FINDINGS OF FACT:** (1) On May 6, 2017, claimant's regular employer, Impact Construction, notified him that he was being temporarily laid off. At the time he was laid off, claimant's employer did not give him a date by which he was expected to return to work.

(2) On May 7, 2017, claimant filed an initial claim for unemployment benefits. He claimed benefits for the period May 7 through May 27, 2017 (weeks 19-17 through 21-17), the weeks at issue. A weekly benefit amount of \$293 was established. When he filed benefits during each of the weeks at issue, claimant indicated that he was on a temporary layoff.

(3) Claimant was given waiting week credit for week 19-17. For week 20-17, was paid \$229 in benefits; his weekly benefit amount was reduced because of earning he reported for that week. For week 21-17, claimant was \$293 in benefits.

(4) During week 19-17 and 21-17, claimant performed no work search activities. During week 20-17, claimant contacted his regular employer and Cozy Wood Hearing about available work.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude that claimant did not actively search for work during weeks 19-17 through 21-17. We also conclude that claimant was overpaid benefits in the amount of \$522 for those weeks.

**Active Work Search:** 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).

Here, claimant did not meet the requirements to be considered temporarily laid off under OAR 471-030-0036(5)(b)(A) because, on the date he was laid off, May 6, 2017, he was not given a return to work date. As a result, claimant was required to conduct five work search activities during each of the weeks at issue to be eligible for benefits. Because claimant conducted no work search activities during two of the weeks at issue (weeks 19-17 and 21-17), and conducted only two work searches during the remaining week at issue (week 20-17), he is ineligible to receive benefits during weeks 19-17 through 21-17.

**Overpayment:** ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

As discussed above, we conclude that claimant was not temporarily laid off during weeks 19-17 through 21-17. As a result, he was required to conduct an active work search during those weeks; because he failed to do so, he was ineligible to receive benefits during those weeks. Claimant was therefore not entitled to receive the \$522 in benefits he received during weeks 19-17 through 21-17. Claimant received those benefits because he stated that he was exempt from the actively seeking work requirement by reason of his temporary layoff from his regular employer during each of the weeks at issue. Regardless of claimant's knowledge or intent in stating that he was exempt from seeking work because his layoff qualified him for the exemption, he is liable to repay the overpaid benefits to the Department because it occurred due to his false statements. He is therefore liable to \$522 to the Department, or have that amount deducted from any future benefits payable to him.

**DECISION:** Hearing Decision 17-UI-88501 is affirmed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, 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](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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