

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0954

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of March 12, 2017 through March 25, 2017 (decision # 91257). Claimant filed a timely request for hearing. On July 20, 2017, ALJ Lohr conducted a hearing, and on July 24, 2017 issued Hearing Decision 17-UI-88731, affirming the Department's decision. On August 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Beginning sometime before March 7, 2017, claimant was employed as a live-in caregiver for her mother in her mother's home.

(2) On March 7, 2017, claimant's mother was admitted to a hospital, which caused claimant to temporarily stop working for her. At that time, hospital staff did not tell claimant when her mother was going to be discharged or when her mother would return home. On March 10, 2017, claimant's mother was discharged from the hospital and transferred to a rehabilitation facility for physical therapy to prepare her to return home. At that time, neither staff at the hospital nor at the rehabilitation facility told claimant when her mother would be discharged from the rehabilitation facility and would return home. However, because the health insurance that covered claimant's mother only authorized rehabilitation services for up to two weeks, claimant anticipated that her mother was going to return home in two weeks or less, at which time claimant would return to work.

(3) On March 15, 2017, claimant filed an initial claim for unemployment insurance benefits online. When claimant filed this claim she marked on the application that she was on a temporary layoff from her regular employer since she expected she would be returning to work in less than one month. When reviewing online the requirements for a temporary layoff, claimant did not notice that the employer who had laid her off had to have given her a return to work date as of the date of the layoff that was within four weeks or less of the date of the layoff. Claimant did not provide a specific return to work date when asked in the online claim materials because she did not know at that time what the exact date would be.

(4) Claimant claimed benefits for the weeks of March 12, 2017 through March 25, 2017 (weeks 11-17 and 12-17), the weeks at issue. During both of these weeks, claimant certified that she was on a temporary layoff. Claimant did not seek any work from any potential employers during these weeks. Claimant also did not list any work seeking activities on her claim reports for those weeks.

(5) On March 27, 2017, claimant's mother was discharged from the rehabilitation center and returned home. On that day, claimant's work for her mother resumed. Sometime later, claimant received a letter dated March 27, 2017 from the Department asking for information about her work seeking activities during weeks 11-17 and 12-17. Claimant did not respond to that letter because she had not performed any work seeking activities during those weeks.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during weeks 11-17 and 12-17. Claimant is not eligible 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*, 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) (emphasis added).

While claimant might have thought it highly likely she was going to return to work within four weeks of the date her mother entered the hospital, or by April 3, 2017, OAR 471-030-0036(5)(b)(A) requires that, to fall within the exemption from the general work seeking requirements for those on a temporary layoff, she had to have been given a date when she would return to work at the time she was laid off. Claimant conceded she was never given a return to work date by anyone, and the hospital and rehabilitation facility never gave her a date on which her mother would be discharged and when, by implication, she would return to work. Audio at ~16:50, ~18:00. Not having been given a return to work date, claimant did not meet the temporary layoff requirements set forth in OAR 471-030-0036(5)(b)(A). Because no other exemptions to the general work search requirements of OAR 471-030-0036(5)(a) are potentially applicable to claimant's layoff, claimant was required to perform five work seeking activities each week to maintain her eligibility for benefits. It undisputed that claimant did not perform any work seeking activities during the weeks at issue. Audio at ~14:59, ~15:46. For these reasons, claimant did not actively seek work during the weeks at issue and is not eligible to receive benefits for those weeks.

DECISION: Hearing Decision 17-UI-88731 is affirmed.

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

DATE of Service: August 24, 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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