

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0973

Affirmed
Ineligible

PROCEDURAL HISTORY: On June 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of May 7, 2017 through June 3, 2017 (decision # 75920). Claimant filed a timely request for hearing. On July 21, 2017, ALJ Murdock conducted a hearing, and on July 24, 2017 issued Hearing Decision 17-UI-88736, affirming the Department's decision. On August 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimants written argument when reaching this decision.

FINDINGS OF FACT: (1) On Friday, April 28, 2017, claimant's regular employer told him he was going to be laid off from all work and would return to work on Tuesday, May 30, 2017.

(2) Claimant claimed benefits for the weeks of May 7, 2017 through June 3, 2017 (weeks 19-17 through 22-17), the weeks at issue. Claimant certified he was on a temporary layoff when claiming benefits during the weeks at issue. When claimant made his weekly claim reports during the weeks at issue, he did not report any work seeking activities other than maintaining contact with his regular employer.

(3) Sometime around May 30, 2017, claimant's regular employer notified him that he was not going to return to work until Monday, June 5, 2017.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue.

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 contacts 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).

Claimant did not perform any work seeking activities other than remaining in contact with his regular employer because he thought he was on a temporary layoff that exempted him from the general working seeking requirements of OAR 471-030-0036(5)(a). However, the layoff which claimant was placed on did not meet the standards for the temporary layoff set out at OAR 471-030-0036(5)(b)(A) for which the work seeking exemption applies. Claimant was laid off on April 28, 2017, and the end of the week in which that layoff occurred was Saturday, April 29, 2017. The return to work date that claimant was given when he was laid off was Tuesday, May 30, 2017, which was four weeks and three days after April 29th. Since the return to work date that claimant was given was not four weeks or less from the date he was laid off, claimant was not eligible for the work seeking exemption available for those on a temporary layoff, even though the announced period for claimant's layoff exceeded the maximum allowable period by only a few days. Because no other exemptions are potentially applicable to claimant's circumstances, claimant was required to perform five work seeking activities to be eligible to receive benefits for the weeks at issue. It is undisputed that claimant did not perform any work seeking activities during the weeks at issue other than remaining in contact with his regular employer. For that reason, claimant did not actively seek work during the weeks at issue and is not eligible to receive benefits during those weeks.

DECISION: Hearing Decision 17-UI-88736 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 1, 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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