

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0990

Affirmed
Ineligible
Overpayment Assessed

PROCEDURAL HISTORY: On June 21, 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 21, 2017 through June 10, 2017 and assessing an overpayment of \$138 (decision # 84159). Claimant filed a timely request for hearing. On July 31, 2017, ALJ Murdock conducted a hearing, and on August 2, 2017 issued Hearing Decision 17-UI-89464, affirming the Department's decision. On August 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks of May 21, 2017 through June 10, 2017 (weeks 21-17 through 23-17), the weeks at issue.

(2) Before approximately April 28, 2017, Golden Construction employed claimant. As well as being its employee, claimant was the owner of Golden Construction. On or about April 28, 2017, Golden Construction did not have any work for claimant to perform. Also as of April 28, 2017, Golden Construction had an upcoming job that claimant thought would start within four weeks. Claimant was going to work on that upcoming job. Claimant did not know the specific date that the job would start or when he would be able to return to work.

(3) On May 22, 2017, claimant filed an initial claim for unemployment insurance benefits. When he completed his application for benefits, claimant did not state he was on a temporary layoff from his regular employment. Claimant's claim was determined valid with a weekly benefit amount of \$138. During the weeks at issue, claimant conducted no work seeking activities other than remaining available for work with Golden Construction.

(4) For each of the weeks at issue, claimant represented in his weekly claim reports that he actively sought work. The Department did not pay claimant benefits for weeks 21-17 and 23-17. The Department paid claimant \$138 in benefits for week 22-17.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue, weeks 21-17 through 23-17, and was not eligible to receive benefits for those weeks. Claimant was overpaid \$138 in benefits for week 22-17 and is liable to repay that amount to the Department or have it deducted from future benefits otherwise payable to him.

Actively Seeking Work. 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).

Claimant very candidly admitted at hearing that, as of the approximate date he was laid off and as of the date when he filed his claim for benefits, he did not know the date he would return to work. Audio at ~13:00, ~13:19, ~13:29, ~14:02. Because claimant did not know the date he would return to work at the time he was laid off, he had not been given a "date to return to work," as required by OAR 471-030-0036(5)(b)(A), and for that reason was not subject to the exemption from the work seeking activities requirements set forth in OAR 471-030-0036(5)(a). Aside from the temporary layoff exemption, there are no other exemptions to the general work seeking requirements of OAR 471-030-0036(5)(a) that are applicable or potentially applicable to claimant's circumstances. For this reason, claimant was required to perform at least five work seeking activities each week, of which at least two needed to be direct contacts with an employer who might hire claimant to maintain his eligibility to receive benefits. However, claimant testified that he did not perform five work seeking activities during the weeks at issue, and did not seek work with any employers other remaining available to work for Golden Construction. Audio at ~12:24. Claimant therefore did not actively seek work during the weeks at issue and was not eligible to receive benefits for those weeks, including the \$138 he was paid for week 22-17.

Overpayment. ORS 657.310(1) states that if an individual receives any benefits to which the individual is not entitled because the individual, regardless of the individual's knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, the individual is liable to repay to the Department the amount of the benefits received to have the amount of benefits deducted from any future benefits otherwise payable to the individual. ORS 657.155(1)(c) states that an individual is eligible to receive benefits for any week only if, among other things, the individual has actively sought work during that week.

Claimant agreed that he was paid \$138 in benefits for week 22-17. Audio at ~12:00. The Department would not have paid claimant those benefits if he had not represented to the Department that he actively sought work that week. Accordingly, even if claimant believed in good faith that he actively sought work during week 22-17, his representation that he did so was nonetheless inaccurate. As such, claimant is liable to repay the \$138 in benefits he received to the Department or to have the \$138 deducted from any future benefits otherwise payable to him.

DECISION: Hearing Decision 17-UI-89464 is affirmed.

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

DATE of Service: September 11, 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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