

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1147**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On August 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 16, 2017 to July 29, 2017 and was overpaid \$604 (decision # 132204). Claimant filed a timely request for hearing. On September 15, 2017, ALJ Janzen conducted a hearing, and on September 19, 2017 issued Hearing Decision 17-UI-92817, affirming the Department's decision. On September 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On June 23, 2017, claimant's regular employer laid him off work pending the beginning of a new project. The employer did not know when the new project would begin. At the time of the layoff, the employer did not tell claimant what date it would return him to full time work. The employer subsequently told claimant a date upon which he would return to part time work.

(2) On July 11, 2017, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits from July 16, 2017 to July 29, 2017 (weeks 29-17 to 30-17), the weeks at issue. Each week claimant claimed, he reported to the Department that he actively sought work during the week claimed. Because of claimant's report, the Department assigned claimant waiting week credit for week 29-17, and paid him his full weekly benefit amount, \$604, for week 30-17.

(3) At the time of his initial claim, claimant reported to the Department that he was laid off work and did not provide the Department with his return to work date, because he had not yet been provided one by the employer. During the weeks at issue claimant remained in contact with his regular employer, but did not perform any other work seeking activities.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not actively seek work and must repay his overpayment to the Department.

To be eligible to receive benefits, unemployed individuals must 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).

During the weeks at issue, claimant was temporarily laid off from his regular employer. In order for claimant's continued contact with his regular employer to satisfy the Department's work seeking requirement during his layoff, though, claimant must, as of the layoff date, been given a date to return to full time work. There is nothing in this record suggesting that the employer gave claimant such a date; rather, claimant testified that he was not given a return to work date at that time, and when he was later given a return to work date, it was only for his return to part time work. For those reasons, claimant was required to conduct five work-seeking activities every week as a condition of being eligible to receive benefits. His contacts with his regular employer amount to one activity each week, which is four short of the requirement. Claimant therefore did not actively seek work during the weeks at issue, and he is not eligible for benefits during either week.

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.*

The Department assigned waiting week credit to claimant during week 29-17 and paid him \$604 in benefits for week 30-17. As previously concluded, however, claimant was not eligible to receive either waiting week credit or \$604. He was, therefore, overpaid. The reason the Department overpaid claimant was that he erroneously reported to the Department that he actively sought work when, in fact, his work seeking activities did not constitute an active work search under the Department's laws and rules. Regardless of claimant's knowledge or intent in making those reports, and even if he made the reports because he sincerely but mistakenly believed that he had met the Department's work seeking requirements, because the overpayment was caused by claimant's erroneous reports he is liable to repay the overpayment or have it deducted from future benefits otherwise payable to him.

**DECISION:** Hearing Decision 17-UI-92817 is affirmed.

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

**DATE of Service:** October 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](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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.