

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1167

Affirmed
Ineligible
(No Elegeible)

PROCEDURAL HISTORY: On July 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant is ineligible for benefits from June 25 through July 22, 2017 because he did not actively seek work during that period (decision # 101637). Claimant filed a timely request for hearing. On September 20, 2017, ALJ Frank conducted a hearing, and on September 28, 2017 issued Hearing Decision 17-UI-93455, affirming the Department's decision. On October 2, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from June 25 through July 22, 2017 (weeks 26-17 through 29-17), the weeks at issue. The Department gave claimant waiting week credit for week 26-17 and paid claimant benefits for weeks 27-17 through 29-17.

(2) On or before June 17, 2017, claimant's regular employer laid claimant off from work, effective June 18, 2017. Claimant was told that he would return to full time work on September 5, 2017, and that the employer might occasionally have work for him in the meantime.

(3) During the weeks at issue, claimant remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer. However, claimant did not search for work with other employers during those weeks.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during the weeks at issue and therefore is not eligible for 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). Where, as here, the Department gives a claimant waiting week credit or pays the claimant benefits for the weeks at issue, the Department has the burden to establish by a preponderance of evidence that claimant is not eligible for waiting week

credit or benefits for those weeks. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

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 full time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, 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). For an individual on temporary layoff of more than four weeks with the individual's regular employer, such individual must immediately seek work consistent with the requirements of OAR 471-030-0036(5)(a). OAR 471-030-0036(5)(c).

In the present case, claimant was not exempt from the work seeking requirements set forth in OAR 471-030-0036(5)(a) during the weeks at issue because he was on temporary layoff of more than four weeks with his regular employer, with only the possibility of occasional work with that employer in the meantime. Thus, to be considered actively seeking work during the weeks at issue, claimant was 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. It is undisputed that claimant did not do so during any of the weeks at issue. Claimant therefore did not actively seek work during the weeks at issue, and is not eligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-93455 is affirmed. *Decisión de la Audiencia 17-UI-93455 queda confirmada.*

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

DATE of Service: October 31, 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.

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.

NOTA: *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de*

*notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en **courts.oregon.gov**. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.