

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1205

Affirmed
Ineligible

PROCEDURAL HISTORY: On August 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work during the weeks from August 6 through 19, 2017, and therefore is ineligible for, and must repay, the \$984 in benefits he was paid for those weeks (decision # 102540). Claimant filed a timely request for hearing. On October 3, 2017, ALJ Monroe conducted a hearing, and on October 6, 2017 issued Hearing Decision 17-UI-94103, affirming the Department's decision. On October 19, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from August 6 through 19, 2017 (weeks 32-17 and 33-17), the weeks at issue.

(2) On August 3, 2017, claimant's regular employer notified him that he was being temporarily laid off, effective August 4, 2017. Claimant was told that he would return to work within two to four weeks. He was not given a date to return to work.

(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, he did not conduct any other work seeking activities during those weeks.

(4) When claiming benefits for the weeks at issue, claimant reported to the Department that he actively sought work during those weeks. The Department therefore paid claimant a total of \$984 in benefits for the weeks at issue.

(5) On August 18, 2017, claimant's regular employer notified him that he would return to full time work on August 21, 2017, and claimant returned to full time work on that date.

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 ineligible for, and must repay, the \$984 in benefits he was paid 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).

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.*

During the weeks at issue in this case, claimant was on a temporary layoff of four weeks or less with his regular employer. However, as of the layoff date, August 4, 2017, claimant had not been given a date to return to work, and was not given a date to return to work until August 18, 2017, when he was told he would return to work on August 21, 2017. Thus, to be considered to have actively sought work during the weeks at issue, claimant was required to conduct at least five work seeking activities per week, as required under OAR 471-030-0036(5)(a). Claimant did not do so. He therefore did not actively seek work during the weeks at issue, and is not eligible for the \$984 in benefits he was paid for those weeks. Claimant received those benefits because he falsely reported to the Department that he actively sought work during the weeks at issue. In written argument, claimant asserted that had had "no intent of fraud" when claiming benefits, and therefore should not have to repay the \$984 in benefits he received. Under ORS 657.310(1), however, claimant is liable to either repay the benefits or have the \$984 deducted from any future benefits payable to him, regardless of his knowledge or intent when claiming benefits.

In sum, claimant did not actively seek work during the weeks at issue, and therefore is ineligible for, and must repay, the \$984 in benefits he was paid for those weeks.

DECISION: Hearing Decision 17-UI-94103 is affirmed.

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

DATE of Service: November 16, 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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