

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1239

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 week of July 30 through August 5, 2017, and therefore is not eligible for benefits for that week (decision # 110000). Claimant filed a timely request for hearing. On October 11, 2017, ALJ M. Davis conducted a hearing and issued Hearing Decision 17-UI-94284, affirming the Department's decision. On October 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent his argument was relevant and based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Claimant claimed benefits for the week of July 30 through August 5, 2017 (week 31-17), the week at issue. The Department paid claimant benefits for that week.

(2) Claimant typically worked for the employer Sundays through Wednesdays. On July 28, 2017, claimant's regular employer notified him that he was being temporarily laid off, effective, Sunday, July 30, 2017. Claimant was told he would return to work in 4 to 7 days. He was not given a date to return to work.

(3) Claimant remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer. On August 1, 2017, claimant's regular employer notified him that he would return to his regular work schedule on Wednesday, August 2, 2017. Claimant returned to work on that date.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant did not actively seek work during the week at issue, and therefore is not eligible for benefits for that week.

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). The individual does not meet the requirements of OAR 471-030-0036(5)(b)(A) if the individual had not, as of the layoff date, been given a date to return to work. OAR 471-030-0036(5)(b)(B).

In the present case, claimant was on a temporary layoff with his regular employer for less than four weeks. However, as of the layoff date, July 30, claimant had not been given a date to return to work, and was not given a date to return to work until August 1, when he was told that he would return to work on August 2. Thus, to be considered actively seeking work, claimant was required to conduct at least five work seeking activities per week, as required under OAR 471-030-0036(5)(b)(A). It is undisputed that claimant did not conduct five work seeking activities during the week at issue. Claimant therefore did not actively seek work during the week at issue, and is not eligible for benefits for that week.

DECISION: Hearing Decision 17-UI-94284 is affirmed.

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

DATE of Service: November 20, 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.