

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1267**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On September 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the week of September 3, 2017 through September 9, 2017 (decision # 130353). Claimant filed a timely request for hearing. On October 23, 2017, ALJ Shoemake conducted a hearing, and on October 26, 2017 issued Hearing Decision 17-UI-95480, affirming the Department's decision. On November 1, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) On January 6, 2017, claimant filed an initial claim for unemployment insurance benefits. At that time, claimant was advised that he needed to perform at least five work seeking activities each week he claimed benefits unless he was on a temporary layoff from his regular employer.

(2) On August 31, 2017, claimant was laid off from his regular employment with GYPPO, Inc. due to forest fire danger. When claimant was laid off, GYPPO, Inc. did not provide a date when he could expect to return to work. Based on 30 years of experience in the forest products industry, claimant was accustomed to layoffs necessitated by fire season. Claimant expected the duration of the layoff to be between one and three weeks only.

(3) On September 7, 2017, claimant reopened his unemployment insurance claim by phone. At that time, claimant spoke with a Department representative. Claimant told the representative that he was temporarily laid off, and that his regular employer had not provided to him an expected return to work date. The representative advised claimant that he was not exempt from the usual work seeking requirements based on the circumstances of the layoff he had described and that he needed to perform five work seeking activities each week that he claimed benefits.

(4) Claimant claimed and was paid benefits for the week of September 3, 2017 through September 9, 2017 (week 36-17), the week at issue. When claimant made his weekly claim report, claimant certified

that he was on a temporary layoff and did not report any work seeking activities. Claimant did not seek work during week 36-17 despite the instructions he had received from the Department representative when he reopened his claim on September 7, 2017 because, after he had spoken with the representative, GYPPO, Inc. notified him that same day he would return to work on September 8, 2017. Claimant did not think it was practical to look for work of such short duration with another employer.

(5) On September 8, 2017, claimant returned to work with his regular employer, GYPPO, Inc..

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work during week 36-17 and is not eligible to receive 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) (emphasis added).

Claimant agreed that his regular employer, GYPPO, Inc., did not supply a date by which he could expect to return to work as of the date of his layoff on August 31, 2017. Audio at ~30:06. OAR 471-030-0036(5)(b)(A) clearly requires that the regular employer must have given claimant, as of the time of the layoff, a *date* on which he could expect to return to work before his layoff qualifies as the type of layoff that would render him exempt from the usual requirement of performing five work seeking activities in a week in which benefits are claimed and would require him only to maintain contact with his regular employer to be considered to have actively sought work in that week. Because claimant was not given a date on which his layoff would end, claimant did not fall within the plain terms of the exemption set out at OAR 471-030-0036(5)(b)(A), and the rule does not allow any exceptions to those terms. For that reason, claimant was required in week 36-17 to perform five work seeking activities to maintain his eligibility for benefits. It was not disputed that claimant did not perform any work seeking activities during week 36-17 other than contacting GYPPO, Inc. Accordingly, claimant did not actively seek work during week 36-17 and is not eligible to receive benefits for that week.

**DECISION:** Hearing Decision 17-UI-95480 is affirmed.

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

**DATE of Service:** November 30, 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.

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