

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1475

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of September 10, 2017 through October 7, 2017 (decision # 100310). Claimant filed a timely request for hearing. On December 4, 2017, ALJ Seideman conducted a hearing, and on December 5, 2017 issued Hearing Decision 17-UI-98287 affirming the Department's decision. On December 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) In 1979, claimant began working for his regular employer, a residential builder. On August 21, 2017, claimant filed an initial claim for unemployment benefits.

(2) On September 8, 2017, the employer notified claimant he was being laid off after that day since the employer needed to obtain permits from the city before it could start upcoming work in a residential subdivision. The employer did not give claimant a date on which he could expect to return to work, but told him that the layoff would last about four weeks.

(3) On September 22, 2017, claimant restarted his unemployment claim online. At that time, claimant certified to the Department that he last worked on September 8, 2017 and that his expected return to work date was October 7, 2017.

(4) Claimant claimed benefits for the weeks of September 10, 2017 through October 7, 2017 (weeks 37-17 through 40-17), the weeks at issue. During the weeks at issue, claimant did not report any work seeking activities other than contacting his regular employer. On Saturday, October 7, 2017, claimant visited the workplace to inquire about when he could start work. The employer told claimant it did not have any work for him that day, but he should report for work on Monday, October 9, 2017. Claimant returned to work as of October 9, 2017.

(5) On October 27, 2017, a Department representative phoned claimant to inquire about his work search activities and whether he had been on the type of layoff between September 8 and October 7, 2017 that

exempted him the usual work search requirements. In that call, claimant told the representative that the employer had not given him a date when he would return to work. Claimant stated that, when restarting his claim, he entered October 7, 2017 as his return to work date because he “counted down” and that date was four weeks from the layoff date. Audio at ~13:24. Claimant understood that he would qualify for the temporary layoff exemption from the usual work search requirements if he was expected to return to work within four weeks of his layoff.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue, and he is ineligible to receive 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). 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)(February 23, 2014) (emphasis added).

Claimant did not dispute that he did not conduct five work seeking activities during any of the weeks at issue, and that the only work search activity he performed was contacting his regular employer. A claimant may be exempted from the usual work seeking requirements of OAR 471-030-0036(5)(a) only if the claimant qualifies for an exemption from its operation. To fall within the exemption for individuals on a temporary layoff, claimant must have been given, as of claimant's layoff, a *date* on which he was expected to return to work. *See* OAR 471-030-0036(5)(b)(A). A “date” is commonly understood to mean “a day of the month or year as specified by a number.” <https://en.oxforddictionaries.com/definition/date>; *see also*, <https://thefreedictionary.com/date> (“date” means a time stated in terms of the day, month and year). In his testimony at hearing, claimant agreed that the employer did not provide to him the date on which he would return to work in terms of specifying a numbered calendar date, but instead generally indicated that he would go back to work in four weeks. Audio at ~20:12. However, OAR 471-030-0036(5)(b)(A) is clear in its requirements, and it does not authorize EAB to find that a claimant falls within the exemption to the usual work seeking requirements that it creates unless claimant meets all of its literal terms, including that he was provided a *date* to return to work. Since the employer did not give claimant a concrete date when he would return to work after his layoff, in terms of identifying a numbered day in a particular month rather than giving an approximate duration in weeks, OAR 471-030-0036(5)(b)(A) is not applicable and does not operate to exempt claimant from the requirement of performing five work seeking activities to maintain his eligibility for benefits during each of the weeks at issue. Because no other exemption to OAR 471-030-0036(5)(a) appears applicable or potentially applicable on the facts in the record, claimant was not eligible for benefits during each of the weeks at issue because he did not perform five work seeking activities.

DECISION: Hearing Decision 17-UI-98287 is affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, not participating.

DATE of Service: January 26, 2018

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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