

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0069

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from October 29, 2017 to November 11, 2017 (decision # 151508). Claimant filed a timely request for hearing. On December 19, 2017, ALJ Wyatt conducted a hearing, and on January 5, 2018 issued Hearing Decision 18-UI-100281, affirming the Department's decision. On January 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant regularly worked for the same employer, which experienced seasonal work slow-downs. During those periods, claimant's employer reduced claimant's work schedule to suit its business needs.

(2) Claimant filed weekly claims for benefits from October 29, 2017 to November 11, 2017 (weeks 44-17 and 45-17), the weeks at issue. During week 44-17, claimant worked 21 hours over a three-day period. He did not perform any additional work-seeking activities. During week 45-17, claimant worked only 12 hours on fewer than five days and did not perform any additional work-seeking activities.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant did not actively seek work, and was not eligible for benefits, from October 29, 2017 to November 11, 2017.

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 few 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.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B).

Claimant argued at the hearing that he should not be required to conduct five work seeking activities per week because he was experiencing a temporary layoff from his regular employment during the weeks at issue. The applicable rules do exempt individuals who are on a temporary layoff from having to seek work under certain circumstances. *See* OAR 471-030-0036(5)(b)(A). However, for the exception to apply, the individual must have been temporarily laid off work. A “temporary layoff” connotes a temporary period of complete cessation of all work.¹ Since claimant continued to work for the employer during the weeks at issue, albeit working reduced hours, he is not considered laid off work, and the exception cannot apply to his circumstances.² He was, therefore, required to actively seek work during the weeks at issue as a condition of being eligible for unemployment insurance benefits.

During week 44-17, claimant worked 21 hours on three days for his regular employer but performed no other work seeking activities. Each day of work should be considered a direct employer contact for purposes of seeking work; claimant therefore conducted three work seeking activities during that week, two activities short of meeting the Department’s required five activities. He was, therefore, ineligible for benefits during week 44-17.

During week 45-17, claimant worked only 12 hours for his regular employer and performed no other work seeking activities. Although the record fails to show how many days claimant worked during week 45-17, given that the cumulative hours worked were fewer than he had worked over a three day period the previous work, we infer it is more likely than not that claimant worked fewer than five days during week 45-17, and therefore conducted fewer than five work seeking activities that week. Because the record fails to show that claimant conducted at least five work seeking activities during week 45-17, we conclude that he did not actively seek work during that week and is ineligible for benefits that week.

DECISION: Hearing Decision 18-UI-100281 is affirmed.

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

DATE of Service: February 14, 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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¹ *See e.g.* <https://www.merriamwebster.com/dictionary/layoff>

² *See* Unemployment Benefits Manual, Ch. 300 §360 (rev 02/28/2016) (“Claimants who continue to work part time are not considered temporarily laid off. These individuals must . . . begin immediately seeking work with other employers [than the regular employer to be eligible for benefits.]”)