

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0114

Affirmed
Ineligible
Overpayment

PROCEDURAL HISTORY: On October 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from September 10, 2017 to October 7, 2017 and, as a result, was overpaid \$1,121 that he was required to repay or have deducted from future benefits otherwise payable (decision # 145028). Claimant filed a timely request for hearing. On January 12, 2018, ALJ S. Lee conducted a hearing, and on January 17, 2018 issued Hearing Decision 18-UI-101050, affirming the Department's decision. On February 2, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant worked for the same establishment for 33 years and experienced periodic layoffs and work reductions. Prior to the weeks at issue, claimant last worked for his regular employer on September 8, 2017. He finished his regular shift that day but the employer told him that starting the following Monday he was being laid off due to a lack of work while some of the employer's contracts were still "in the works." Audio recording at ~ 20:35.

(2) Claimant and the employer discussed claimant's return to work date and scheduled it for October 9, 2017. Claimant and the employer were aware of the Department's administrative rule exempting certain laid off individuals from having to seek work as a condition of receiving unemployment benefits if, among other things, the layoff was expected to last four weeks or less. Claimant and the employer intended that claimant meet the eligibility requirements for receiving unemployment insurance benefits during his layoff without having to look for another job elsewhere, and scheduled his return to work for a date they believed was exactly four weeks from the layoff date.

(3) On September 15, 2017, claimant filed an initial claim for unemployment insurance benefits. He reported that his last day worked was September 8, 2017 and that his return to work date with his regular employer was October 3, 2017. He reported his return to work date as October 3 instead of October 9 because he made an unintentional error.

(4) Claimant filed weekly claims for benefits from September 10, 2017 through October 7, 2017 (weeks 37-17 through 40-17), the weeks at issue. During week 37-17, claimant performed some work for his regular employer and reported to the Department that he had work and earnings. During week 38-17, claimant did not have any work or earnings with the employer. During week 39-17, claimant performed truck driving work for the employer and attended planning meetings, and he reported his work and earnings to the Department when claiming benefits that week. During week 40-17, claimant did not have any work or earnings with the employer.

(5) Based in part on claimant's report that he actively sought work each week by remaining in contact with and being capable of accepting and reporting for any suitable work with his regular employer, the Department paid claimant \$1,121 in unemployment insurance benefits.

CONCLUSIONS AND REASONS: Claimant did not actively seek work and was overpaid.

Actively seeking work. 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 first issue in this case is whether, during the weeks at issue, claimant was exempt from the work search requirements because he was "on a temporary layoff." A "temporary layoff" connotes a temporary period of complete cessation of all work.¹ Since claimant continued to work for the employer in the week after being "laid off" and worked again two weeks later, albeit on a sporadic basis and with reduced hours, he is not considered laid off work, and the exception cannot apply to his circumstances.² He was, therefore, 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 him, during the weeks at issue as a condition of being eligible for unemployment insurance benefits.

Claimant's only work seeking activities during the weeks at issue were contacts with his regular employer. He did not conduct five work seeking activities, did not "actively seek work," and is not eligible to receive unemployment insurance benefits during any of the weeks at issue.

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.")

Overpayment. 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.*

As previously noted, claimant was not eligible to receive unemployment insurance benefits during the weeks of September 10, 2017 to October 7, 2017 (weeks 37-17 to 40-17) because he did not actively seek work. However, the Department paid him \$1,121 in benefits during those weeks based upon claimant's report to the Department that he actively sought work. Because claimant was not eligible to receive those benefits, he was overpaid. Because the overpayment was the result of claimant's mistaken report to the Department about actively seeking work, and regardless of his knowledge or intent in making that report, claimant is liable to either repay the overpaid benefits to the Department or have that amount deducted from future benefits otherwise payable.

DECISION: Hearing Decision 18-UI-101050 is affirmed.

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

DATE of Service: March 5, 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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