

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0182**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On December 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of November 12, 2017 through December 16, 2017 (decision # 81233). Claimant filed a timely request for hearing. On January 31, 2018, ALJ Clink conducted a hearing, and on February 2, 2018 issued Hearing Decision 18-UI-102371, affirming the Department's decision. On February 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument dated February 14, 2018 when reaching this decision.

Claimant also submitted a letter dated March 9, 2018 from claimant's regular employer, in which the employer expressed its displeasure that the ALJ found claimant not eligible for benefits. While EAB appreciates the employer's input and intent that claimant be eligible for benefits, that does not affect the legal issue before EAB on claimant's application for review, which is the application of OAR 471-030-0036(5)(a)-(b)(February 23, 2014) to claimant's circumstances.

**FINDINGS OF FACT:** (1) On Friday, November 10, 2017, claimant's regular employer told him he was being laid off "for about four weeks" and he would return to work "about the 10<sup>th</sup> of December." Audio at ~21:33, ~21:42. Claimant understood that when he would actually be called back to work depended on when the employer's business got busier, and since the employer did a great deal of work for loggers "who were up in the woods and getting snowed out," the date when he actually would return to work was "kind of a day to day deal if [the employer became] busy or not." Audio at ~27:06.

(2) On November 12, 2017, claimant filed an initial claim for benefits. When he filed this claim, claimant stated he was on a temporary layoff and he expected to return to work on Sunday, December 10, 2017.

(3) Claimant claimed benefits for the weeks of November 12, 2017 through December 16, 2017 (weeks 46-17 through 50-17), the weeks at issue. When claimant claimed benefits for the weeks at issue, he stated that he was on a temporary layoff. For the weeks at issue, claimant did not engage in, and did not

report any work seeking activities other than remaining in contact with his regular employer. During claimant's contacts with his regular employer during the weeks at issue, the employer did not give him a date when he would return to work, but only told him that "we really don't have anything right now, call back next week." Audio at ~24:45.

(4) Claimant did not return to work on December 10, 2017 or during the week of December 10 through December 16, 2017. On December 18, 2017, claimant returned to work.

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work during the weeks of November 12, 2017 through December 16, 2017 and is not eligible 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).

To fall within the exemption from the usual requirement of performing five work seeking activities each week set out at OAR 471-030-0036(5)(b)(A), claimant's employer needed, among other things, to have provided to him, as of the layoff date, a date to return to work that was within four weeks of that layoff. As a matter of plain meaning, a "date to return to work" implies certainty and definiteness in the date, rather than being a date that, from the outset, the employer expresses as a tentative one that may change depending on factors or contingencies. Here, the employer's statement, as recounted by claimant, that he would be laid off for *about* four weeks and that he would return to work on *about* December 10, 2017 was not sufficiently definite, firm or certain to constitute a return to work date within the meaning of the applicable regulation. As such, as of the layoff date, claimant was not given a return to work date that was within four weeks of the layoff date. Because no other exemptions are applicable, OAR 471-030-0038(5)(a) applies to claimant's situation and, to remain eligible to receive benefits, claimant was required to perform five work seeking activities in each week that he claimed benefits. It is undisputed that claimant did not perform five work seeking activities during each of the weeks at issue. For that reason, claimant did not actively seek work during the weeks at issue and is not eligible to receive benefits for them.

Claimant argued in his February 14, 2017 written argument that he should be considered eligible to receive benefits for the first four of the weeks at issue, November 12 through December 9, 2017, because he was "denied for an error regarding one week (week 5) [December 10 through December 16, 2017], not the previous four weeks." Claimant seems to be contending that he is not ineligible during the first four weeks since four weeks is the maximum length of a layoff that will qualify as a temporary layoff. However, the issue here is not the length of time that claimant was laid off but, as discussed above, whether his regular employer gave him a sufficiently firm and definite return to work date, as of

the time he was laid off, to have his layoff fall within the exemption set out at OAR 471-030-0036(5)(b)(A). Because, as described by claimant, it was not sufficiently firm and definite at the time of the layoff, claimant was not exempted from the requirement of performing five work seeking activities during all of the weeks at issue, and is not eligible to receive benefits for any of them.

Claimant did not actively seek work during the weeks at issue and is not eligible to receive benefits for any of them.

**DECISION:** Hearing Decision 18-UI-102371 is affirmed.

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

**DATE of Service:** March 16, 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](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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