

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0190

Affirmed
Ineligible – Weeks 50-17 through 51-17

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 including December 10 through December 23, 2017 (decision # 94618). Claimant filed a timely request for hearing. On January 31, 2018, ALJ S. Lee conducted a hearing, and on February 1, 2018, issued Hearing Decision 18-UI-102197, affirming the Department's decision. On February 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On July 2, 2017, claimant filed an initial claim for unemployment insurance benefits. On or about that date, the Department mailed to claimant UI Publication 195, which explained the requirements for an active work search, including the requirement of remaining in contact with an employer when a claimant was on a temporary layoff, after explaining what that term meant.¹ The Department determined that claimant's claim was valid and that his weekly benefit amount was \$413.

(2) Between July 2, 2017 and early December 2017, claimant returned to work at Mo Rosas Logging as an equipment operator. On December 8, 2017, the employer notified claimant that he was being laid off, but that the employer expected him to return to work by January 8, 2018, depending upon the weather. Audio Record ~ 25:45 to 26:30.

(3) Claimant claimed and received benefits for each of the weeks including December 10 through December 23, 2017 (weeks 50-17 through 51-17), the weeks at issue.

(4) During each of the weeks at issue, claimant remained in contact with the employer but did not perform any other work search activities.

¹ The Department also mailed UI Publication 195 to claimant on October 31 and November 30, 2017. Audio Record ~ 11:00 to 12:00.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not actively seek work and was ineligible for benefits for each of the weeks including December 10 through December 23, 2017 (weeks 50-17 through 51-17).

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).

Where, as here, the Department paid benefits or gave waiting week credit for weeks claimed, and then subsequently denied that the claimant was eligible for those benefits, the Department has the burden to establish by a preponderance of evidence that the claimant was not entitled to the benefits paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). Here, the Department met its burden.

Among the requirements to qualify for the exception to the actively seeking work requirement that applies to individuals temporarily laid off from their regular employment, is that the length of the planned layoff must have been four weeks or less, starting from the end of the week in which the layoff occurred. Claimant’s planned layoff began on December 8, 2017, and the end of that week was December 9th. Therefore, claimant must have been scheduled to return to work within four weeks of December 9th, which would have been January 6, 2018. Because January 8, 2018, the date on which claimant reported to the Department that he was scheduled to return to work, was more than four weeks after the end of the week in which his layoff began, the exception to the actively seeking work requirement was inapplicable to claimant’s layoff. Moreover, because there was no dispute that claimant’s return to work on January 8, 2018 was weather dependent, the record shows that the return to work date claimant was given was not a “scheduled” one under the rule, and for that additional reason, the temporary layoff exception to the actively seeking work requirement was inapplicable to claimant’s layoff.

Because the temporary layoff exception did not apply, claimant was required to perform five work seeking activities each week as a condition of being eligible to receive unemployment insurance benefits. During the two weeks at issue, claimant performed only one activity per week by maintaining contact with his regular employer. Because he did not perform five activities per week, he did not “actively seek work” and is ineligible for benefits during the weeks at issue, weeks 50-17 through 51-17.

DECISION: Hearing Decision 18-UI-102197 is affirmed.

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

DATE of Service: March 20, 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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