

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0288

Affirmed
Ineligible

PROCEDURAL HISTORY: On February 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks from January 7, 2018 through January 20, 2018 (decision # 105205). Claimant filed a timely request for hearing. On March 7, 2018, ALJ Wyatt conducted a hearing, and on March 9, 2018 issued Hearing Decision 18-UI-104897, affirming the Department's decision. On March 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On January 2, 2018, claimant's regular employer laid him off work, and told him to return to work on January 8, 2018. He did not tell claimant he would return to full time work at that time.

(2) Claimant worked 24 hours during the week from January 7 through January 13, 2018 (week 2-18), earning \$528.75. Claimant did not seek other work during week 2-18. During week 2-18, the employer told claimant to return to work during week 3-18, but did not tell claimant he would be returning to full time work.

(3) Claimant worked 10 hours during the week from January 14 through January 20, 2018 (week 3-18), earning \$225. Claimant did not seek other work during week 3-18.

(4) Claimant claimed and was initially paid benefits for the weeks from January 7, 2018 through January 20, 2018 (weeks 2-18 and 3-18), the weeks at issue. Claimant's weekly benefit amount was \$604.¹

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. Claimant did not actively seek work and is ineligible for benefits for each of the weeks including January 7 through January 20, 2018 (weeks 2-18 through 3-18).

¹ EAB takes notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of EAB mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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.* However, for an individual on a temporary layoff of four weeks or less with the individual’s regular employer, if the individual had, as of the layoff date, been given a date to return to full time work or work for which remuneration is paid or payable that equals or exceeds the individual’s weekly benefit amount, such individual is actively seeking 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 temporary layoff occurred. OAR 471-030-0036(5)(b)(A). The individual does not meet the requirements of OAR 471-030-0036(5)(b)(A) if the individual had not, as of the layoff date, been given a date to return to *full time work or work for which remuneration is paid or payable that equals or exceeds the individual’s weekly benefit amount.* OAR 471-030-0036(5)(b)(B). (Italics added for emphasis.)

Where, as here, the Department paid benefits for weeks claimed, and then subsequently concluded that the claimant was not 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.

Here, as of the layoff dates on January 2, 2018 and during week 2-18, claimant’s regular employer gave him a return to work date that was within four calendar weeks following the end of the week in which the temporary layoff occurred. However, the employer did not tell claimant, as of the layoff dates, that he would be returned to full time work. Nor did claimant perform work during either week at issue for which remuneration was paid or payable that exceeded his weekly benefit amount of \$604. Thus, as of the layoff date given to claimant each week at issue, claimant had not been given a date to return to full time work or work for which remuneration was paid or payable that equaled or exceeded his weekly benefit amount. Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b)(A).

Because the temporary layoff exception provided by OAR 471-030-0036(5)(b) 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. Although claimant sought work with his regular employer during the weeks at issue and worked part time for that employer, because he was not given, as of his layoff date, a date to return to full time work or work that paid more than his weekly benefit amount, his work search had to include work search activities with other employers, including temporary work opportunities. OAR 471-030-0036(c). Claimant did not perform five work seeking activities in either of the two weeks at issue. Because he did not perform five activities in either of the weeks at issue, he did not “actively seek work” during the weeks at issue, and is ineligible for benefits for each of the weeks at issue, weeks 2-18 through 3-18.

DECISION: Hearing Decision 18-UI-104897 is affirmed.

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

DATE of Service: April 12, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.