

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0358

Affirmed
Ineligible

PROCEDURAL HISTORY: On February 6, 2018, the Oregon Employment Department (the Department) served notices of administrative decisions concluding that claimant did not actively seek work from December 31, 2017 to January 6, 2018 (decision # 92021) and January 14, 2018 through January 27, 2018 (decision # 95207). Claimant filed timely requests for hearing on both decisions. On March 26, 2018, ALJ Snyder conducted a consolidated hearing, and on March 29, 2018 issued Order No. 18-UI-106200, affirming decision # 92021, and Order No. 18-UI-106201, affirming decision # 95207. On April 9, 2018, claimant filed applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order No. 18-UI-106200 and 18-UI-106201. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0358 and 2018-EAB-0359).

FINDINGS OF FACT: (1) Claimant claimed benefits for the week of December 31, 2017 through January 6, 2018 (week 1-19) and the weeks from January 14 through 27, 2018 (weeks 3-18 and 4-18), the three weeks at issue.

(2) On December 29, 2017, claimant's regular employer laid him off from work due to poor weather conditions. At that time, claimant was told that he would return to work "in two weeks." Audio Record at 9:30-10:10. In response, claimant looked at the calendar and said, "That'll be about the 15th, then," and was told, "Yes." Audio Record at 10:10-10:15. However, claimant returned to work on January 8th because weather conditions improved. After working for a week, on January 13, 2018, claimant's regular employer again laid him off work due to poor weather conditions. At this time, claimant was told that the layoff would "probably be two weeks." Audio Record at 11:45-12:00.

(3) During the weeks at issue, claimant remained in daily contact with and was capable of accepting and reporting for work with his regular employer. However, claimant did not seek other work during those weeks because he believed that he was exempt from seeking other employment because he would be returning to full time work within four weeks.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. Claimant did not actively seek work during the weeks at issue, and therefore is ineligible for 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) (February 23, 2014). 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).

Here, as of claimant's first layoff date, he initially was told that he would return to work in two weeks, and he then confirmed that that meant he would return to work on or "about" January 15, 2018, and not specifically on that date. Claimant therefore was not given a specific date to return to work, as required under OAR 471-030-0036(5)(b). Likewise, as of claimant's second layoff date, he was told the layoff would "probably be two weeks," and was not given a specific date to return to work, as required under OAR 471-030-0036(5)(b). Claimant therefore did not meet the requirements of OAR 471-030-0036(5)(b).

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. Claimant testified that he was in daily contact with his employer during the weeks at issue, but that he did not do any other job searches because his employer needed him to be available to return to work when the weather improved. Although claimant sought work with his regular employer during the weeks at issue, because he was not given, as of his layoff date, a date to return to full time work, 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 any of the weeks at issue. He therefore did not "actively seek work" during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Orders No. 18-UI-106200 and 18-UI-106201 are affirmed.

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

DATE of Service: May 10, 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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