

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0567**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On April 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from March 18, 2018 to March 24, 2018 (decision # 122726). Claimant filed a timely request for hearing. On May 18, 2018, ALJ Snyder conducted a hearing, and on May 22, 2018 issued Order No. 18-UI-109895, affirming the Department's decision. On June 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant last worked as a welder for a regular employer on March 16, 2018. He expected to return to work on June 4, 2018.

(2) On March 19, 2018, claimant filed an initial claim for unemployment insurance benefits.<sup>1</sup> Claimant filed a weekly claim for unemployment insurance benefits for the week of March 18, 2018 through March 24, 2018 (week 12-18), the week at issue. The Department did not pay claimant benefits for the week at issue.<sup>2</sup>

(3) During the week at issue, claimant sought work as a welder. He made two direct contacts with potential employers and looked for work online. He wrote down his activities and sent them to the Department, but the Department did not receive record of claimant's work search activities.

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<sup>1</sup> We take notice of claimant's initial claim filing date, 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 our 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.

<sup>2</sup> We take notice of claimant's claim payment history for the week at issue, which is contained in Employment Department records and shows that claimant did not receive a benefit payment for that week. 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 our 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.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not actively seek work during the week at issue.

To be eligible to receive benefits, unemployed individuals must 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).<sup>3</sup> 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 record in this case suggests that claimant might have been temporarily laid off work from a regular employer during the week at issue in this case. However, claimant's layoff was expected to last from March 16, 2018 through June 4, 2018, almost three months. Because his layoff was not expected to last four weeks or less, he is not exempt from the requirement that he actively seek work during the week at issue by conducting five work seeking activities during that week.

The Department withheld benefits from claimant for the week at issue, so claimant has the burden of establishing that benefits should have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). In other words, claimant has the burden to prove that it is more likely than not he did at least five work seeking activities during week 12-18, or he will be considered ineligible for benefits. Claimant's testimony established that he conducted only three work seeking activities during the week at issue by having direct contact with two employers and seeking work online. Claimant therefore did not establish that benefits should have been paid, and he is ineligible for benefits for the week at issue, week 12-18.

**DECISION:** Order No. 18-UI-109895 is affirmed.

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

**DATE of Service:** July 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](http://courts.oregon.gov). Once on the website, use the

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<sup>3</sup> OAR 471-030-0036 was amended effective April 1, 2018, and the ALJ applied the amended version of the rule to this case. However, OAR 471-010-0015 provides that the rules in effect at the time an individual files an initial, additional or continued claim should be applied to issues associated with that claim for benefits. The version of OAR 471-030-0036 that effective February 23, 2014 through March 30, 2018 was the version in effect at the time of claimant's claim filing in this case, and that version is therefore the version applicable to this case.

‘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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