

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1023-R**

*Request for Reconsideration Granted*  
*Appeals Board Decision 2015-EAB-1023 Adhered to on Reconsideration*

**PROCEDURAL HISTORY:** On June 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision #120711) concluding that claimant was not actively seeking work from May 17 through 30, 2015 (weeks 20-15 and 21-15). Claimant filed a timely request for hearing. On August 6, 2015 ALJ M. Davis conducted a hearing, and issued Hearing Decision 15-UI-42674, affirming decision #120711. On August 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On September 3, 2015, EAB issued Appeals Board Decision 2015-EAB-1023, affirming Hearing Decision 15-UI-42674. On September 15, 2015, claimant submitted a written argument to EAB. Under the authority granted to us by ORS 657.290(3), we will reconsider Appeals Board Decision 2015-EAB-1023 to consider claimant's written argument.

Included with claimant's written argument was a letter from his employer, evidence which was not presented at the hearing. Under OAR 471-041-0090 (October 26, 2009), EAB may consider new information if the party offering the information shows that circumstances beyond its reasonable control prevented the party from presenting the information at the hearing. Because claimant provided no explanation why he did not offer the employer's letter into evidence at the hearing, we will not consider it.

In Hearing Decision 15-UI042674, the ALJ concluded that claimant did not actively seeking work from May 17 through 30, 2015 (weeks 2-15 and 21-15), the weeks at issue. Claimant believed he was on temporary layoff from his employer during the weeks at issue and therefore exempt from the normal work search requirements. The ALJ concluded that claimant was not on a temporary layoff under OAR 471-030-0036(5)(b) (February 23, 2014) because the employer had given him no definite return to work date when it laid him off. In his written argument, claimant contended that he was laid off on May 17, 2015 because of "rain and weather issues," and that the employer gave him a return to work date of June 1, 2015. At hearing, however, claimant testified that the employer told him he would be back to work in a "couple of weeks," when the ground had "dried out." Audio Recording at 17:25 and 17:41. Based on this evidence, the ALJ correctly concluded that claimant had no definite return to work date and was not on temporary layoff status during the weeks at issue.

Under OAR 471-041-0145(1), EAB may reconsider a decision to correct an error of fact or law, or to explain any unexplained inconsistency with a Department rule or practice, or an officially stated Department position. Claimant failed to demonstrate that EAB made any error of fact or law by affirming the hearing decision at issue. We therefore find no basis for altering our Appeals Board Decision 2015-EAB-1023.

**DECISION:** Reconsideration is granted. We adhere to Appeals Board Decision 2015-EAB-1023.

Susan Rossiter and J. S. Cromwell

**DATE of Service: September 21, 2015**

**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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