

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1094-R**

*Reconsideration Granted*  
*Appeals Board Decision 2015-EAB-1094 Adhered to on Reconsideration*

**PROCEDURAL HISTORY:** On July 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 73838) concluding claimant did not actively seek work from May 24, 2015 to June 13, 2015 (weeks 21-15 through 23-15). Claimant filed a timely request for hearing. On September 3, 2015, ALJ Wyatt conducted a hearing, and on September 4, 2015 issued Hearing Decision 15-UI-43936, affirming the Department's decision. On September 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On September 17, 2015, EAB issued Appeals Board Decision 2015-EAB-1094, affirming the hearing decision under review. On October 1, 2015, claimant submitted a written argument to EAB. We will exercise our authority under ORS 657.290(3) to reconsider our decision to address the major issue addressed in claimant's written argument.

In Hearing Decision 15-UI-42674, the ALJ concluded that claimant did not actively seek work from May 24 through June 13, 2015 (weeks 21-15 through 23-15), the weeks at issue. In his written argument, claimant disputed the ALJ's conclusion, explaining that when the Forest Service laid him off from his seasonal job as an archaeologist, "I was told I was going to be rehired for the 2015 season and would learn of my rehire date once funding was finalized. Around May 24<sup>th</sup> I was told that my rehire date would be June 15, 2015." Written Argument at 1. Based on these circumstance, claimant concluded he was on a temporary layoff during the weeks at issue and not required to conduct an active work search in accordance with OAR 471-030-0036(5)(a) (February 23, 2014).<sup>1</sup> The ALJ correctly noted, however, that an individual is on a temporary layoff only if the individual had, *as of the date of layoff*, been given a definite return to work date, and that return to work date is within four calendar weeks following the end of the week in which the temporary layoff occurred. OAR 471-030-0036(5)(b)(A). Because the Forest Service gave claimant no definite return to work date when it laid

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<sup>1</sup> OAR 471-030-0036(5)(b) provides that an individual who is not on a temporary layoff is considered actively seeking work if the individual conducts five work seeking activities per week, at least two of those being direct contact with an employer who might hire the individual.

him off on April 30, 2015, claimant was not on a temporary layoff during the weeks at issue and required to conduct an active work search.

Claimant contended, however, that there are few job openings for archaeologists in his labor market, and that had he applied for any open jobs with the Forest Service, the Forest Service would not have made a hiring decision until sometime after June 15, the date he expected to return to work. Claimant argued that under these circumstances, he was “doing what an ordinary and reasonable person would to return to work at the earliest opportunity” in compliance with OAR 471-030-0036 by not looking for work during the weeks at issue. Written Argument at 2. Department rules, however, define very specifically what “an ordinary and reasonable person who seeks to return to work at the earliest opportunity” must do to actively seek work. As discussed below, an individual who is not on a temporary layoff must conduct “five work seeking activities per week, at least two of those being direct contact with an employer who might hire the individual.” OAR 471-030-0036(5)(a). While claimant understandably found these requirements frustrating and unreasonable, we agree with the ALJ that Department rules cannot be disregarded.

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. Because claimant failed to demonstrate that the ALJ made any error of fact or law in Hearing Decision 15-UI-42674, EAB did not err in affirming this decision.

**DECISION:** Reconsideration is granted. We adhere to Appeals Board Decision 2015-EAB-1094 as clarified herein.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** October 7, 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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