

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0020**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On September 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 84747) concluding claimant did not actively seek work from August 16, 2015 to August 29, 2015 (weeks 33-15 through 34-15). On October 5, 2015, decision # 84747 became final without claimant having filed a timely request for hearing. On October 26, 2015, claimant filed a late request for hearing. On November 4, 2015, ALJ Kangas issued Hearing Decision 15-UI-47086, dismissing claimant's request for hearing subject to her right to renew her request by responding to an appellant questionnaire by November 18, 2015. On November 16, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On November 25, 2015, OAH mailed claimant a letter canceling Hearing Decision 15-UI-47086. On December 2, 2015, OAH mailed claimant notice of a hearing scheduled for December 14, 2015. On December 14, 2015, ALJ S. Lee conducted a hearing, and on December 15, 2015 issued Hearing Decision 15-UI-49421, allowing claimant's late request for hearing and concluding claimant did not actively seek work. On January 2, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of the ALJ's decision allowing claimant's late request for hearing. We therefore confined our decision to the active work search issue.

In written argument, claimant admitted the employer did not provide him with a date for his return to work at the time he was laid off, but offered to provide a letter from his employer corroborating claimant's claim that the employer expected to return claimant to work within 4 weeks of his layoff date. However, the applicable rules require that, in order for the layoff exception to the work search requirement to apply, claimant must have "been given a *date* to return to full-time work," and states that the individual "does not meet the requirements . . . if [he] had not, as of the layoff date, been given a *date* to return." OAR 471-030-0036(5)(b)(A) and (B) (emphasis added). Thus, under the applicable rule, it is immaterial that an individual's total layoff period might be less than four weeks. If, like this claimant, no return to work *date* has been given to the individual by the employer, the layoff exception to the work search requirement cannot apply, and the individual must instead perform five work search

activities during each week claimed in order to be considered to have actively sought work as provided in OAR 471-030-0036(5)(a).

**DECISION:** Hearing Decision 15-UI-49421 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 11, 2016**

**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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