

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0198-R**

*Reconsideration Granted*  
*Appeals Board 2017-EAB-0198 Adhered to on Reconsideration*

**PROCEDURAL HISTORY:** On November 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 105123) concluding that claimant failed to actively search for work from October 16 through 29, 2016 (weeks 42-16 and 43-16). Claimant filed a timely request for hearing. On December 2, 2016, the Office of Administrative Hearings issued notice of a hearing scheduled for December 16, 2016. On December 16, 2016, ALJ Shoemake issued Hearing Decision 16-UI-73148, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On January 25, 2017, ALJ Triana conducted a hearing, and on January 26, 2017, issued Hearing Decision 17-UI-75481, granting claimant's request to reopen and affirming administrative decision # 105123. On February 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On February 23, 2017, EAB issued Appeals Board Decision 2017-EAB-0198, affirming Hearing Decision 17-UI-75481. On March 15, 2017, EAB received a letter and other materials from claimant. EAB will exercise its discretion under ORS 657.290(3) to address some issues raised in claimant's submission.

Claimant's March 15, 2017 submission included materials that were not offered into evidence at the hearing. Under OAR 471-041-0090(2) (October 29, 2006), EAB may consider new information if the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing. Because claimant has provided no reason why he was unable to offer the information he now wants EAB to consider into evidence at the hearing, his request to have EAB consider new information is denied.

In Appeals Board Decision 2017-EAB-0198, we affirmed the ALJ's conclusion that claimant was ineligible to receive unemployment benefits from October 16 through 29, 2016, the weeks at issue, because he did not perform an active work search as defined by ORS 6571.155(1)(c) during those weeks. We agreed with the ALJ's finding that claimant did not qualify for the temporary layoff exemption<sup>1</sup>

<sup>1</sup> 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).

from the work search requirements of the statute because, on the date the employer laid claimant off, the employer did not give claimant a date by which he would be returning to work.

In his March 15, 2017 submission, claimant asserted that he thought he was going back to work within four weeks of the date on which the employer laid him off, because the employer told him he would be returning to work “next Monday.” The record shows, however, that at the time the employer laid claimant off, it did not give claimant a date by which he was expected to return to work.

Relevant definitions of “date” include “the day of the month or year as specified by a number” and “a particular day or year when a given event occurred or will occur.”<sup>2</sup> On October 15, 2016, the last day claimant worked for the employer, the employer told claimant he would have work for claimant on Thursday or Monday. Audio recording at 23:34, 25:18. Because Thursday or Monday is not “a particular day,” the employer never gave claimant a date when he would be expected to return to work. Claimant was therefore not on a temporary layoff as that term is defined in OAR 471-030-0036(5)(b)(A), and was required to search for work during the weeks at issue. Because he failed to do so, the ALJ correctly concluded that he was ineligible to receive unemployment benefits during those weeks.

For the above reason, EAB did not err in affirming the ALJ’s conclusion that claimant was ineligible to receive unemployment benefits from October 16 through 29, 2016. Because we find no error of fact or law in EAB Decision 2017-EAB-0198 that would require correction, we adhere to that decision on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision “to the extent necessary and appropriate for the correction of a previous error of fact or law”).

**DECISION:** Reconsideration is granted. Appeals Board Decision 2017-EAB-0198 is adhered to on reconsideration.

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

**DATE of Service:** March 17, 2017

**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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<sup>2</sup> <https://en.oxforddictionaries.com/definition/date>.