

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0205**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from November 13 through December 10, 2016 (decision # 64335). Claimant filed a timely request for hearing. On February 8, 2017, ALJ Lohr conducted a hearing, and on February 9, 2017 issued Hearing Decision 17-UI-76528, affirming decision # 64335. On February 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-76528 is reversed, and the matter remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and 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). 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 of four weeks or less with the individual's regular employer and had, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount, 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).

In Hearing Decision 17-UI-76528, the ALJ found that claimant last worked for his regular employer on Friday, November 11, 2016, that his regular employer told him he would return to full time work on Monday, December 12, 2016, and that claimant did not seek work from November 13 through December 10, 2016 (weeks 46-16 through 49-16), the weeks at issue.<sup>1</sup> Based on those findings, the ALJ concluded that because claimant's return to work date was more than four weeks after his last day of

<sup>1</sup> Hearing Decision 17-UI-76528 at 1, 3.

work, he was required to seek work during the weeks at issue, did not do so, and therefore is ineligible for benefits for those weeks.<sup>2</sup>

We agree with the ALJ's finding that claimant's last worked for his regular employer on Friday, November 11, 2016, that his regular employer told him he would return to full time work on Monday, December 12, 2016, and that claimant did not seek work with other employers during the weeks at issue. However, we have repeatedly held that in determining whether an individual is on a temporary layoff of four weeks or less, the layoff date is that on which the individual first misses work due to the layoff, and not that on which the individual last worked before the layoff. In EAB Decision 2016-EAB-1184, for example, we reasoned as follows:

Neither OAR 471-030-0036(5) nor any other applicable law or rule defines what "the layoff date" is or when it begins for purposes of OAR 471-030-0036(5)(b)(A) and (B). Accordingly, we look to the plain meaning of the words used in the term for guidance. The primary definition of the word "layoff" is "a period of inactivity or idleness." The primary definition of the word "date" is "the time at which an event occurs." Read together, then, the plain meaning of the term "layoff date" is the time at which the period of inactivity or idleness begins.

In this case, claimant's period of inactivity did not begin on Friday, July 22, 2016. She worked that day. Although she was *notified* of the impending layoff on July 22nd, claimant's layoff did not actually begin until Monday, July 25, 2016, the first regularly scheduled workday upon which claimant was barred from working by the employer, or, put another way, the time at which the period of inactivity began.<sup>3</sup>

In the present case, the ALJ conducted no inquiry into the date on which claimant first missed work due to the layoff. Absent such an inquiry, we cannot determine claimant's layoff date, or whether he was on a temporary layoff of four weeks or less. We therefore cannot determine whether he was required to conduct five work seeking activities per week during the weeks at issue, or merely to remain in contact with and be capable of accepting and reporting for any suitable work with his regular employer. If the latter, the ALJ also failed to conduct an inquiry into whether claimant, in fact, remained in contact with and was capable of accepting and reporting for any suitable work with his regular employer. Absent such inquiries, we cannot determine whether claimant actively sought work during the weeks at issue, or therefore whether he is eligible for benefits for those weeks.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> EAB Decision 2016-EAB-1184 at 2-3 (emphasis in original, footnotes omitted). *See also* EAB Decision 2016-EAB-0308 (April 15, 2016) (Claimant was laid off effective . . . the first day he missed work due to the layoff); EAB Decision 2016-EAB-0645 (July 8, 2016) (Claimant's layoff date was the first day he missed work due to the layoff); EAB Decision 2016-EAB-1355 (January 9, 2017) (Claimant's layoff began on the first regularly scheduled work day on which she was prevented from working).

the ALJ failed to develop the record necessary for a determination of whether claimant actively sought work during the weeks at issue, Hearing Decision 17-UI-76528 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 17-UI-76528 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: February 24, 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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