

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0244**

*Affirmed*  
*Ineligible Weeks 47-16 through 50-16*

**PROCEDURAL HISTORY:** On January 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 91457) concluding that claimant was not available for work from November 20 through December 17, 2016 (weeks 47-16 through 50-16). Claimant filed a timely request for hearing. On February 24, 2017, ALJ M. Davis conducted a hearing, and on February 24, 2017 issued Hearing Decision 17-UI-77687 affirming the administrative decision. On February 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 11, 2016, Kodiak Pacific Construction, claimant's employer, told claimant that he was being laid off from his job as an operator and would return to work within four weeks. Audio recording at 8:16.

(2) On November 21, 2016, claimant's employer told him that he would be returning to work on December 21, 2016.

(3) Also on November 21, 2016, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks 47-16 through 50-16 (November 20 through December 17, 2016), the weeks at issue. During the weeks at issue, claimant spoke weekly to his employer, but performed no other work search activities.

**CONCLUSION AND REASONS:** We agree with the ALJ, and conclude that claimant failed to actively search for work during the weeks at issue.

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 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) (February 23, 2014).

On November 11, 2016, claimant's regular employer told him he was being laid off and would be returning to work within four weeks. 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>1</sup> Because "within four weeks" is neither a day of the month "as specified by a number" or "a particular day," claimant was never given, as of the layoff date, a date when he would be expected to return to work. Claimant therefore did not qualify for the temporary exception to the work search requirements 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, he is ineligible to receive benefits during the weeks at issue.

**DECISION:** Hearing Decision 17-UI-77687 is affirmed.

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

**DATE of Service:** March 21, 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>1</sup> <https://en.oxforddictionaries.com/definition/date>.