

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0381**

*Affirmed*  
*Ineligible Weeks 48-16 and 49-16*

**PROCEDURAL HISTORY:** On January 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 92226) concluding that claimant failed to actively search for work from November 27 through December 10, 2016 (weeks 48-16 and 49-16). Claimant filed a timely request for hearing. On March 20, 2017, ALJ Lewis conducted a hearing, and on March 21, 2017, issued Hearing Decision 17-UI-79268, affirming the administrative decision. On March 29, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 25, 2016, claimant's regular employer, Professional Landscapers, notified him that he would be laid off and that he "should start the next job with two weeks." Audio recording at 18:45. The employer did not provide claimant with a return to work date.

(2) On November 30, 2016, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits online for weeks 48-16 and 49-16 (November 27 through December 10, 2016). When claimant filed his claims online, he was advised that he was required to actively seek work during each week claimed unless he had been laid off and given a date to return to work within four weeks of the date on which he was laid off. Audios recording at 13:13. The Department also sent claimant Publication 195 which advised him of these work search requirements. Audio recording at 13:30.

(3) During week 48-16, claimant contacted his regular employer, but performed no other work search activities.

(4) Sometime during week 49-16, claimant contacted his regular employer and learned that because of the weather, he would not be returning to work as expected. Audio recording at 25:31. In addition to contacting his regular employer, claimant also contacted two other employers about available work during week 49-16. Audio recording at 11:34.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that claimant failed to actively search for work during weeks 48-16 and 49-16.

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)(A).

In order for the "temporary layoff" exception to apply, the individual must have, "as of the layoff date, been given a date to return to . . . work." *Id.* Here, the employer told claimant that he was being laid off and that the "next job," *i.e.*, the point at which he would return to work, would start within the two 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 two 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 layoff exception to the work search requirements in OAR 471-030-0036(5)(b)(A), and was required to actively search for work during each of the weeks at issue. Because the record shows that claimant did not perform the number or type of work seeking activities required by law, he did not actively search for work during weeks 48-16 and 49-16 and is ineligible to receive unemployment benefits for those weeks.

**DECISION:** Hearing Decision 17-UI-79268 is affirmed.

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

**DATE of Service:** April 10, 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>.