

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0840**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On February 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 25, 2016 to January 7, 2017 (decision # 101343). Claimant filed a timely request for hearing. On June 19, 2017, ALJ S. Lee conducted a hearing, and on June 27, 2017 issued Hearing Decision 17-UI-86717, affirming the Department's decision. On July 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On December 7, 2016, claimant's regular employer, Taylor NW, LLC, laid claimant off work due to snow. The employer scheduled claimant to return to work "the week ending 12/31/2016." Exhibit 1.

(2) On December 15, 2016, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits for the weeks of December 25, 2016 to January 7, 2017, the weeks at issue. He did not seek work during the weeks at issue except by maintaining contact with his regular employer.

(3) On approximately December 27, 2016, the employer told claimant that his return to work would be delayed another week after December 31<sup>st</sup>, and that his return to work was weather-dependent. Claimant's return to work was later delayed past January 7, 2017. On January 9, 2017, claimant began seeking work with other employers. On January 16, 2017, the employer returned claimant to work.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant is ineligible for benefits from December 25, 2016 to January 7, 2017.

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) (February 23, 2014).

Claimant testified that he did not look for work beyond maintaining contact with his regular employer because he understood the eligibility advisory he received from the Department to state that he did not have to seek work with other employers if he knew he was going to return to work within four weeks. Audio recording at ~ 22:05, 23:20. However, the advisory claimant actually received from the Department advised claimant that he did not have to seek work with other employers if he had "*a definite date* to return to full-time work for your regular employer within four weeks from the last day of work," and that "[i]f your return to full-time work date is delayed, you must advise the UI Center immediately and you must begin seeking other work." Exhibit 1 (emphasis added).

Claimant did not qualify for the temporary layoff exception as it was explained in the advisory. With respect to the "definite date" requirement, the word "definite" means "unambiguous" and "clear or undeniable."<sup>1</sup> With respect to the word "date," it is generally defined as "The day of the month or year as specified by a number" or "A particular day . . . when a given event occurred or will occur."<sup>2</sup> Claimant was told he would return to work during the week ending December 31<sup>st</sup>, which is not "definite" and also cannot be considered "date" because it encompasses a span of seven different dates upon which claimant might have been returned to work. Because claimant did not have "a definite date" upon which he was to return to work at any point during the weeks at issue, he did not qualify for the temporary layoff exception under the terms of the advisories he received, much less under the applicable administrative rule. Claimant was therefore required to actively seek work as a condition of being eligible for benefits.<sup>3</sup>

The only work seeking activity claimant performed during the weeks at issue was to maintain contact with his regular employer, which did not amount to the two direct contacts and three additional work seeking activities required under OAR 471-030-0036(5)(a). Because he did not actively seek work, he is ineligible for benefits during the weeks at issue.

**DECISION:** Hearing Decision 17-UI-86717 is affirmed.

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

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<sup>1</sup> See <https://en.oxforddictionaries.com/definition/definite>

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

<sup>3</sup> Even if claimant had been eligible for the temporary layoff exception during the week ending December 31, 2016, claimant would have been ineligible for the temporary layoff exception during the week ending January 7, 2017 on other grounds. As of December 27<sup>th</sup> his December 31<sup>st</sup> return to work date had been delayed another week, and the advisory from the Department explained that if that happened he was require to advise the UI Center "immediately" and then begin seeking other work. Claimant did not notify the UI Center or begin seeking work until January 9, 2017.

**DATE of Service: August 9, 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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