

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0859-R

Reconsideration Granted

*Appeals Board Decision 2017-EAB-0858 Adhered to on Reconsideration – Ineligible Weeks 49-16 through 52-16,
Eligible Weeks 1-17 and 2-17*

Appeals Board Decision 2017-EAB-0859 Modified on Reconsideration – Ineligible Weeks 7-17 and 8-17

PROCEDURAL HISTORY: On March 13, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding that claimant did not actively seek work from December 4, 2016 through January 14, 2017 (decision # 90302), and one concluding that claimant did not actively seek work from February 12 through February 25, 2017 (decision # 91138). Claimant filed timely requests for hearings on both administrative decisions. On July 6, 2017, ALJ Hall conducted a consolidated hearing, and on July 6, 2017, issued Hearing Decision 17-UI-87367, affirming decision # 90302, and Hearing Decision 17-UI-87380, affirming decision # 91138. On July 17, 2017, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB). On August 10, 2017, EAB issued Appeals Board Decisions 2017-EAB-0858 and 2017-EAB-0859, which modified the hearing decisions by concluding that claimant did not actively seek work during weeks 49-16 through 52-16, but did actively seek work during weeks 1-17 through 2-17.

On August 28, 2017, the Department requested that EAB reconsider Appeals Board Decisions 2017-EAB-0858 and 2017-EAB-0859. The Department's request is granted, and EAB will reconsider its decisions to address the issue raised in the Department's letter.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of Appeals Board Decisions 2017-EAB-0858 and 2017-EAB-0859. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0858-R and 2017-EAB-0859-R).

In Appeals Board Decision 2017-EAB-0858, EAB found that claimant did not actively search for work during weeks 49-16 through 52-16 and was therefore ineligible to receive benefits for those weeks.¹

¹ 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). 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.*

EAB also found that claimant conducted an active work search during weeks 1-17 and 2-17 and was eligible to receive benefits for those weeks. We rejected claimant's assertion that he was not required to search for work during weeks 4-16 through 5-17 because he was on a temporary layoff from his regular employer because we found that claimant's employer had not given him a date by which he was expected to return to work on the date he was laid off.² That decision has not been challenged by the Department in its reconsideration request, and we therefore adhere to Appeals Board Decision 2017-EAB-0858 on reconsideration. As the Department notes in its reconsideration request, however, we failed to determine in Appeals Board Decision 2017-EAB-0859 whether claimant was eligible to receive unemployment benefits for weeks of 7-17 and 8-17 (February 12 through 25, 2017). On reconsideration, we modify our decision to address this issue.

The record shows that claimant did not perform any work search activities during weeks 7-17 and 8-17 because he was under the assumption that he was on a temporary layoff and did not need to look for work. Transcript at 26. The record also shows that because his ability to perform his job was dependent on the weather, he was never given a date by which the employer expected he would be returning to full time work. Transcript at 19. Claimant was therefore not exempt from the active work search requirement under the temporary layoff exception and was required to seek work by performing five work seeking activities per week during weeks 7-17 and 8-17. Because he failed to do so, he is ineligible to receive benefits for those weeks.

DECISION: Appeals Board Decision 2017-EAB-0858 is adhered to on reconsideration. Appeals Board Decision 2017-EAB-0859 is modified, as outlined above.

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

DATE of Service: August 30, 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. 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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² 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).