

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0905**

*Affirmed*  
*Ineligible Weeks 1-17 to 3-17*

**PROCEDURAL HISTORY:** On March 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 1, 2017 to January 21, 2017 (decision # 93855). Claimant filed a timely request for hearing. On July 10, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-87595, affirming the Department's decision. On July 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On January 6, 2017, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits from January 1, 2017 to January 21, 2017 (weeks 1-17 to 3-17), the weeks at issue.

(2) Claimant's regular employer was National Frozen Foods. Beginning December 22, 2016, the employer laid claimant off work. The employer originally told claimant that the length of the layoff was from "Christmas" until "the end of January." Audio recording at ~ 12:28.

(3) During the weeks at issue, claimant maintained contact with his regular employer but did not perform any other work search activities.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not actively seek work.

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).

Among the other requirements, to qualify for the exception to the actively seeking work requirement that applies to individuals temporarily laid off from their regular employment, claimant must have been given a “date” to return to work. Relevant definitions of “date” are [t]he 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> Claimant’s return to work was going to occur at “the end of January,” which is not a “day of the month . . . as specified by a number” or a “particular day.” Therefore, claimant was not given a “date” to return to work, the exception to the actively seeking work requirement did not apply to claimant’s layoff.

In addition to the requirement that claimant be given a “date” to return to work, the length of the planned layoff must have been four weeks or less, starting from the end of the week in which the layoff occurred. Claimant’s layoff began on December 22<sup>nd</sup>, and the end of that week was December 24<sup>th</sup>. Claimant must therefore have been scheduled to return to work within four weeks of December 24<sup>th</sup>, which would be January 21<sup>st</sup>, which was about a week and a half prior to “the end of January,” and therefore more than four weeks after his layoff began, again making the exception to the actively seeking work requirement inapplicable to claimant’s layoff.

Because the circumstances of claimant’s layoff did not qualify him for the exception to the actively seeking work requirement, he was required to perform five work seeking activities each week as a condition of being eligible to receive unemployment insurance benefits. During the three weeks at issue, claimant performed only one activity per week by maintaining contact with his regular employer. Because he did not perform five activities a week, he did not “actively seek work” and he is ineligible for benefits during the weeks at issue, weeks 1-17 to 3-17.

**DECISION:** Hearing Decision 17-UI-87595 is affirmed.

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

**DATE of Service:** August 22, 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>