

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1035**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On April 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from February 5, 2017 to February 25, 2017 (decision # 83254). On April 24, 2017, decision # 83254 became final without claimant having filed a timely request for hearing. On June 12, 2017, claimant filed a late request for hearing. On August 4, 2017, ALJ Wyatt conducted a hearing, and on August 11, 2017 issued Hearing Decision 17-UI-90209, affirming the Department's decision. On August 30, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant's late request for hearing was allowed are **adopted**.

**FINDINGS OF FACT:** (1) On January 31, 2017, claimant last worked for his regular employer. At the time of the layoff, the employer told claimant that he would be laid off for one month. The employer did not give claimant a date he was scheduled to return to work.

(2) Claimant filed weekly claims for benefits for the weeks of February 5, 2017 to February 25, 2017 (weeks 6-17 to 8-17), the weeks at issue. He reported to the Department at that time that he had been temporarily laid off work. Claimant did not perform any work seeking activities during the weeks at issue because he planned to return to work for his regular employer when his layoff ended.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not actively seek work and he is ineligible for benefits.

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).

In order for the exception to the work seeking requirement to apply to a claimant during a layoff, he must, at the time of his layoff, have been given "a date" to return to work, and that date must be within four weeks or less of the layoff date. In this case, claimant was told that he would return to work in a month. A "date" is defined in relevant part as a "day of the month or year as specified by a number" or "[a] particular day or year when a given event occurred or will occur."<sup>1</sup> A "month" is not a "date." Nor is a "month" necessarily within a four week period of the layoff date given that most months last 30 or 31 days and are thus several days longer than four weeks. Because claimant was not given a date to return to work that was within a month or less of his layoff date, the layoff exception to the work seeking requirement does not apply to his case, and he was therefore required to conduct at least five work seeking activities per week as a condition of receiving benefits. Because claimant did not do so, he was not eligible to receive benefits during the weeks at issue.

**DECISION:** Hearing Decision 17-UI-90209 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** September 25, 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> *See* <https://en.oxforddictionaries.com/definition/date>