

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1100**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On July 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 9, 2017 through July 22, 2017 (decision # 131305). Claimant filed a timely request for hearing. On August 30, 2017, ALJ Triana conducted a hearing, and on August 31, 2017 issued Hearing Decision 17-UI-91654, affirming the Department's decision. On September 12, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 22, 2016, claimant filed an initial claim for unemployment insurance benefits.

(2) On July 14, 2017, claimant's regular employer laid claimant off from work and told him he would return to work "within four weeks." Audio Record at 12:15 to 12:19. At the time the employer laid claimant off from work, it did not give claimant a definite date that he would return to work.

(3) On July 17, 2017, claimant restarted his claim and claimed benefits for the weeks of July 9, 2017 through July 22, 2017 (weeks 28-17 through 29-17), the weeks at issue. He reported to the Department at that time that he was temporarily laid off from work. The Department denied benefits for those weeks.

(4) During the week of July 9 through July 15, 2017, claimant prepared a resume and contacted his regular employer, but did not conduct any other work seeking activities.

(5) During the week of July 16 through July 22, 2017, claimant contacted his regular employer and one other employer, but did not conduct any other work seeking activities. During that week, claimant's regular employer told claimant he would return to full time work on August 12, 2017.

**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). Where, as here, the Department has denied a claimant benefits, the claimant has the burden to establish by a preponderance of evidence that claimant is entitled to those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). Claimant did not meet his burden.

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 have been given “a date” to return to work at the time of his layoff, and that date must be within four weeks or less of the layoff date. In this case, claimant was told at the time of his layoff that he would return to work “within four weeks.” 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> “Within four weeks” is not a “date.” 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, weeks 28-17 and 29-17.

**DECISION:** Hearing Decision 17-UI-91654 is affirmed.

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

**DATE of Service:** October 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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<sup>1</sup> See <https://en.oxforddictionaries.com/definition/date>