

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0163

*Reversed
Ineligible*

PROCEDURAL HISTORY: On November 8, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work (decision #130447). Claimant filed a timely request for hearing. On January 15, 2014, ALJ Sime conducted a hearing, and on January 17, 2014 issued Hearing Decision 14-UI-08696, concluding claimant was available for work. On January 24, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed and was denied benefits for the period August 4, 2013 through September 7, 2013 (weeks 32-13 through 36-13) and the period September 22, 2013 through October 26, 2013 (weeks 39-13 through 43-13), the weeks at issue.

(2) Claimant had experience and training as an office worker and as a teacher. Claimant worked for several years as a substitute teacher and an American Red Cross instructor for the employer. In April 2013, claimant removed herself from the employer's substitute teacher list because she began working full time as an office manager for another employer. On August 2, 2013, claimant's employment ended with the other employer.

(3) Because claimant no longer wanted to work as a substitute teacher, claimant did not put her name back on the employer's substitute teacher list when her employment ended with the other employer on August 2, 2013. She continued to work as an American Red Cross instructor for the employer.

CONCLUSIONS AND REASONS: Claimant was unavailable for work during the weeks at issue.

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). An individual must meet certain minimum requirements to be considered "available for work" for purposes of ORS 657.155(1)(c). OAR

471-030-0036(3) (January 8, 2006). Among those requirements are that the individual be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

In Hearing Decision 14-UI-08696, the ALJ determined that “absent evidence from the Employment Department that claimant was ordered to look for work as a teacher, claimant can choose to seek more office related work” and still be considered available for work under OAR 471-030-0036(3).¹ We disagree. Claimant had worked as a substitute teacher for the employer for several years when she took her name off the list, and she remained employed as a part time instructor for the employer. At hearing, claimant testified that she did not put her name back on the substitute teacher list when her other full time employment ended because she no longer wanted to work as a substitute teacher. To remain available for work for the purposes of ORS 657.155(1)(c), claimant must refrain from imposing conditions that limit her opportunities to return to work at the earliest possible time. Claimant was willing to work as an American Red Cross instructor, but not as a substitute teacher, for her employer. Refusing to put her name back on the substitute teacher list for her current employer imposed a condition that substantially reduced her opportunities to return to work as a teacher at the earliest possible time. Claimant therefore was ineligible for benefits for the weeks at issue.

DECISION: Hearing Decision 14-UI-08696 is set aside, as outlined above.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: February 26, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.

¹ Hearing Decision 14-UI-08696 at 3.