

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0239

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 8, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from September 15 through 28, 2013 (decision # 154239). Claimant filed a request for hearing. On December 13, 2013, ALJ Kangas issued Hearing Decision 13-UI-06457, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.¹ On January 2, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On January 13, 2014, OAH issued a letter canceling Hearing Decision 13-UI-06457. On January 21 and 24, 2014, ALJ R. Davis conducted a hearing, and on January 30, 2014 issued Hearing Decision 14-UI-09513, allowing claimant's request for hearing, and concluding that claimant was not available for work from September 15, 2013 through January 8, 2014. On February 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No party appealed that portion of Hearing Decision 14-UI-09513 allowing claimant's request for hearing. EAB therefore limited its review to whether claimant was available for work during the weeks at issue.

EAB considered the entire hearing record and claimant's written argument. With his written argument, claimant submitted and asked EAB to consider documents that were not part of the hearing record. However, the documents are not material to EAB's determination of whether claimant was available for work during the weeks at issue. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from September 15, 2013 through January 8, 2014 (weeks 38-13 through 03-14), the weeks at issue. The Department did not pay claimant benefits for those weeks.

¹ Hearing Decision 13-UI-06457 at 1-2.

(2) During the weeks at issue, claimant sought work in foreign countries. Claimant was not pre-authorized to work for an employer as an employee in those countries. He therefore could not accept and report for work as an employee in those countries until after he or the potential employer applied for and obtained a work permit for claimant.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must be available for 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 is that the individual must be capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought. *Id.* Where, as here, the Department did not pay a claimant benefits, the claimant has the burden to establish that he is eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

During the weeks at issue, claimant sought work in foreign labor markets. In written argument, as at hearing, claimant asserted that he was capable of accepting and reporting for opportunities to work as a non-employee consultant in those labor markets without a work permit. However, it is undisputed that claimant was not pre-authorized to work for an employer as an employee in those labor markets, and therefore, was incapable of accepting and reporting for opportunities to work as an employee in those labor markets until after he or the potential employer applied for and obtained a work permit for claimant. Claimant therefore failed to show that he was capable of accepting and reporting for any and all suitable work opportunities in those labor markets during any week at issue. Absent such a showing, claimant failed to establish that he was available for work during any week.

Claimant was not available for work during the weeks at issue, and therefore is ineligible for benefits for those weeks.

DECISION: Hearing Decision 14-UI-09513 is affirmed.

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

DATE of Service: March 10, 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.