

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0379

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from January 5 through 18, 2014 (decision # 74749). Claimant filed a timely request for hearing. On February 28, 2014, ALJ Vincent conducted a hearing, and on March 6, 2014 issued Hearing Decision 14-UI-11471, concluding that claimant was not available for work from January 5 through February 22, 2014. On March 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. 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) On January 8, 2014, claimant filed an initial claim for benefits online. When doing so, claimant indicated that she could not work full time. When asked why, claimant indicated that she only was able to work part time.

(2) Claimant claimed benefits for the weeks from January 5 through 18, 2014 (weeks 02-14 and 03-14). The Department did not pay claimant benefits for those weeks.

(3) On January 24, 2014, a Department representative asked claimant why she was only able to work part time. Claimant stated that she suffered from Post-Traumatic Stress Disorder (PTSD) and other medical issues, but that she was able to work full time. However, claimant stated that she was unwilling to work full time because if she did, the extra money she earned would be taken out to pay child support.

(4) Claimant claimed benefits for the weeks from January 19 through February 22, 2014 (weeks 04-14 through 08-14). The Department did not pay claimant benefits for those weeks.

(5) Claimant suffered from depression and anxiety disorder, for which she was treated with medication.

CONCLUSIONS AND REASONS: Claimant failed to establish that she was available for work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must be able to work and available for work during each week claimed. ORS 657.155(1)(c). An individual is considered able to work for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (January 8, 2006). To be considered available for work for purposes of ORS 657.155(1)(c), an individual must be willing to work full time, and during all of the usual hours and days of the week customary for the work being sought. OAR 471-030-0036(3). However, an individual prevented from working full time or during particular shifts due to a permanent or long-term “physical or mental impairment” as defined at 29 C.F.R. §1630.2(h) shall not be deemed unable to work or unavailable for work solely on that basis so long as the individual remains available for some work. OAR 471-030-0036(2)(b) and (3)(e). An individual who is the parent of a child under 13 years of age who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual is considered available for work if the work the individual is seeking is customarily performed during other shifts in the individual’s normal labor market, and the individual is willing to and capable of working during such shifts. OAR 471-030-0036(4). Where, as here, the Department did not pay a claimant benefits, the claimant has the burden to establish by a preponderance of evidence that she is eligible to receive those benefits. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

On January 24, 2014, claimant told a Department representative that she was able to work full time, but that she was unwilling to do so because if she did, the extra money she earned would be taken out to pay child support. At hearing, however, claimant testified that she was willing to work full time. However, she also testified that she was unwilling to work full time because she saw her daughters only every other weekend, and wanted to spend the entire weekend with them. However, she also testified that she was unwilling to work full time due to her mental impairments, including depression and anxiety disorder. *See* Audio Record at 1:00 – 22:00. On cross-examination, however, claimant again stated that she was unwilling to work full time because if she did, the extra money she earned would be taken out to pay child support. Audio Record at 22:00 - 25:30.

Claimant’s inconsistent statements are insufficient to show by a preponderance of evidence that she was prevented from working full time or during particular shifts due to her mental impairments, or because of a lack of acceptable childcare for her daughters every other weekend. Claimant therefore failed to establish by a preponderance of evidence that she was able to work and available for work during the weeks at issue. We therefore conclude that claimant is not eligible for benefits for those weeks.

DECISION: Hearing Decision 14-UI-11471 is affirmed.

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

DATE of Service: March 27, 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.