

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0411

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On August 19, 2013, the Oregon Employment Department (the Department) served notice of six administrative decisions concluding claimant is ineligible for benefits from January 27 through February 2, 2013 (decision # 135611), March 17 through 23, 2013 (decision # 140647), April 28 through May 11, 2013 (decision # 155750), May 12 through 18, 2013 (decision # 161243), May 26 through June 1, 2013 (decision # 160736), and May 26 through August 3, 2013 (decision # 133739). On September 4, 2013, claimant filed a request for hearing on all six decisions. On October 31, 2013, the Office of Administrative Hearings (OAH) issued notice of a consolidated hearing scheduled for November 12, 2013 at 9:30 a.m. On November 18, 2013, ALJ R. Frank issued Hearing Decisions 13-UI-04629, 13-UI-04633, 13-UI-04635, 13-UI-04636, 13-UI-04637 and 13-UI-04643, dismissing claimant's request for hearing for failure to appear. On December 2, 2013, claimant filed a timely request to reopen the hearing. On December 18, 2013, ALJ S. Lee reviewed claimant's request to reopen and issued Hearing Decisions 13-UI-06766, 13-UI-06768, 13-UI-06770, 13-UI-06771, 13-UI-06773 and 13-UI-06778, denying claimant's request. On January 6, 2014, claimant filed applications for review with the Employment Appeals Board (EAB). On January 15, 2014, EAB issued Appeals Board Decisions 2014-EAB-0035, 2014-EAB-0037, 2014-EAB-0038, 2014-EAB-0039, 2014-EAB-0040, and 2014-EAB-0041, allowing claimant's request to reopen and remanding the matters back to the Office of Administrative Hearings (OAH) for additional proceedings. On February 27, 2014, ALJ Kirkwood conducted a consolidated hearing, and on February 28, 2014 issued Hearing Decisions 14-UI-11352, 14-UI-11353, 14-UI-11354, 14-UI-11355, 14-UI-11356 and 14-UI-11357, affirming the Department's six administrative decisions. On March 14, 2014, claimant filed applications for review with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-11352, 14-UI-11353, 14-UI-11354, 14-UI-11355, 14-UI-11356 and 14-UI-11357. For case-tracking purposes, this decision is being issued in sextuplicate (EAB Decisions 2014-EAB-0406, 2014-EAB-0407, 2014-EAB-0408, 2014-EAB-0409, 2014-EAB-0410 and 2014-EAB-0411).

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the weeks from January 27 through February 2, 2013 (week 05-13), March 17 through 23, 2013 (week 12-13), April 28 through May 18, 2013 (weeks 18-13 through 20-13), and May 26 through August 3, 2013 (weeks 22-13 through 31-13), the weeks at issue.

(2) During the weeks at issue, the employer employed claimant as its “number one” on-call banquet server and bartender. Transcript at 17-18. The usual hours and days of the week customary for such work were 8:00 a.m. to 2:00 a.m., all days of the week.

(3) During week 05-13, claimant had an opportunity to work for the employer on January 30, 2013, and failed to accept and report for work due to illness.

(4) During week 12-13, had an opportunity to work for the employer on March 17, 2013, and failed to accept and report for work because he was spending time with his family and an old family friend.

(5) During week 18-13, claimant had opportunities to work for the employer from April 30 through May 4, 2013, and failed to accept and report for work due to illness.

(6) During week 19-13, claimant had an opportunity to work for the employer on May 5, 2013, and failed to accept and report for work due to illness.

(7) During week 20-13, claimant had an opportunity to work for the employer on May 15, 2013, and failed to accept and report for work due to illness.

(8) During week 22-13, claimant had an opportunity to work for the employer on May 26, 2013, and failed to accept and report for work because he was attending an annual “church event.” Transcript at 31.

(9) On or about May 26, 2013, claimant informed the employer that he preferred not to work on Mondays, or before 1:00 p.m. on Fridays, Saturdays and Sundays. On or about August 1, 2013, claimant informed the employer that he no longer had that preference.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant is ineligible for benefits for 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). To be considered available for work for purposes of ORS 657.155(1)(c), an individual must be willing to work during all of the usual hours and days of the week customary for the work being sought,<sup>1</sup> capable of reporting for any suitable work opportunities within the labor market in which work is being sought,<sup>2</sup> and not imposing conditions which substantially reduce the individual's

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<sup>1</sup> OAR 471-030-0036(3)(a).

<sup>2</sup> OAR 471-030-0036(3)(b).

opportunities to return to work at the earliest possible time.<sup>3</sup> An individual is not available for work in any week claimed if the individual has an opportunity to perform suitable work during the week and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity. OAR 471-030-0036(3)(f)(A).

Under OAR 471-030-0036(3)(b) and 471-030-0036(3)(f)(A), claimant was not available for work during weeks 05-13 and 18-13 through 20-13 because had had opportunities to perform suitable work during those weeks and failed to accept and report for such work due to illness. Under OAR 471-030-0036(3)(a), claimant was not available for work during weeks 12-13 and 22-13 because he was not willing to work during all of the usual hours and days of the week customary for his work for the employer. Under OAR 471-030-0036(3)(c), claimant was not available for work during weeks 22-13 through 31-13 because in informing the employer that he preferred not to work on Mondays, or before 1:00 p.m. on Fridays, Saturdays and Sundays, claimant imposed a condition that substantially reduced his opportunities to return to work at the earliest possible time.

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

**DECISION:** Hearing Decisions 14-UI-11352, 14-UI-11353, 14-UI-11354, 14-UI-11355, 14-UI-11356 and 14-UI-11357 are affirmed.

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

**DATE of Service:** April 11, 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.

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<sup>3</sup> OAR 471-030-0036(3)(c).