

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0463**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On January 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from December 8, 2013 through December 14, 2013 (decision #10887). Claimant filed a timely request for hearing. On March 11, 2014, ALJ Triana conducted a hearing, and on March 14, 2014 issued Hearing Decision 14-UI-12491, affirming the Department's decision. On March 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. We considered the entire hearing record and claimant's argument.

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the week of December 8, 2013 to December 14, 2013 (week 50-13), the week at issue. The Department paid, then subsequently denied, benefits for that week.

(2) During the week at issue, claimant was seeking work as an accounts receivable employee. Claimant's labor market was Pleasant Hill, Eugene, and Springfield, Oregon. In claimant's labor market, the days and hours customary for accounts receivable work included Monday through Friday, day shift.

(3) Prime Med Medical, claimant's normal employer, scheduled claimant to work the day shift on December 12, 2013. The employer was open for business that day. Claimant was not capable of reporting to work that day because she could not drive or find alternate transportation due to hazardous driving conditions in the Eugene and Springfield area.

(4) Claimant had worked for Prime Med Medical before, performing work similar to that she was scheduled to perform on December 12, 2013.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant was not available for work during the week December 8, 2013 to December 14, 2013 (week 50-13).

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). At issue in this case was claimant's availability for work during the week December 8, 2013 to December 14, 2013 (week 50-13).

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) (February 23, 2014). Among those requirements are that the individual be willing to work during all of the usual hours and days of the week customary for the work being sought, and capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, and not imposing conditions that substantially reduce the individual's opportunities to return to work at the earliest possible time. *Id.* Where, as here, the Department initially paid a claimant benefits, the Department has the burden to establish by a preponderance of the evidence that the claimant was not eligible to receive those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

It was undisputed that claimant was not capable of reporting for all suitable work opportunities during the day shift on Thursday, December 12, 2013, due to hazardous road conditions. The record shows the work on December 12 was work that claimant performed regularly for that employer, and does not show the work itself was unsuitable. The fact that hazardous road conditions made claimant incapable of commuting to work that day did not make the work unsuitable. *See* ORS 657.190. Because claimant was not capable of reporting for any suitable work opportunities during the day shift on a Thursday, which is part of the days and hours customary for the accounts receivable employee work she sought, claimant was not available for work during the week at issue. In her written argument to EAB, claimant argued that the Department should not deny claimant benefits where she made every effort to report to work, but was incapable of doing so due to a severe winter storm. Claimant's written argument. However, the availability required by ORS 657.155(1)(c) and OAR 471-030-0036(3) does not allow exceptions to the availability requirement based on hazardous driving conditions. A claimant must be available for suitable work to receive unemployment insurance benefits. Claimant was therefore not eligible for benefits for that week.

Claimant was unavailable for work during the week of December 8, 2013 to December 14, 2013 (week 50-13). Claimant is ineligible to receive benefits for that week.

**DECISION:** Hearing Decision 14-UI-12491 is affirmed.

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

**DATE of Service:** April 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.