

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0483

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On January 13, 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 11, 2014 (decision # 95219). Claimant filed a timely request for hearing. On March 12, 2014, ALJ Clink conducted a hearing, and on March 13, 2014 issued Hearing Decision 14-UI-12425, affirming the Department's decision. On March 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the week from January 5 through 11, 2014 (week 02-14), the week at issue. The Department did not pay claimant benefits for that week.

(2) Prior to January 3, 2014, claimant worked for her regular employer as an office supervisor. In claimant's labor market, the usual hours and days customary for work as an office supervisor were 8:00 a.m. to 5:00 pm. on weekdays. On January 3, 2014, claimant was temporarily laid off from work. During the issue, claimant remained in contact with her regular employer.

(3) At approximately 2:30 p.m. on January 6, 2014, claimant made a voluntary court appearance and was escorted to Jackson County jail for processing before being released at approximately 3:30 p.m. Claimant was not free to leave, and therefore was not capable of accepting and reporting for any work opportunities within her labor market, during that time.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant was not available for work during the week at issue.

To be eligible to receive benefits, unemployed individuals must be 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) (February 23, 2014). Among those requirements are that the individual be Capable of accepting

and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities. *Id.*

Where, as here, the Department does not pay a claimant benefits, the claimant has the burden to establish that she is eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). At hearing, claimant argued that she is eligible for benefits for the week at issue under OAR 471-030-0036(5), which states the requirements for an individual on temporary layoff to be considered actively seeking work. However, the issue in this case is not whether claimant was actively seeking work during the week at issue, but whether she was available for work during that week. It is undisputed that claimant was not capable of accepting and reporting for any work opportunities from approximately 2:30 p.m. to 3:30 p.m. on January 6, 2014. Claimant therefore was not capable of accepting and reporting for all suitable work opportunities within her labor market during the week at issue. She therefore is not eligible for benefits for that week.

**DECISION:** Hearing Decision 14-UI-12425 is affirmed.

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

**DATE of Service:** April 15, 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.