

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0749**

*Modified*  
*(Modificada)*  
*Benefits Allowed in Part, Denied in Part*  
*(Beneficios Parcialmente Aprobados, Parcialmente Denegados)*

**PROCEDURAL HISTORY:** On March 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was unavailable for work from March 9, 2014 through March 22, 2014 (decision #105207). Claimant filed a timely request for hearing. On April 22, 2014, ALJ Shoemake conducted a hearing, and on April 25, 2014 issued Hearing Decision 14-UI-16062, concluding claimant was available for work from March 9, 2014 through April 19, 2014. On May 5, 2014, the Department filed an application for review with the Employment Appeals Board (EAB).

The Department submitted written argument to EAB. The Department failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant filed her initial claim for benefits on March 12, 2014. Claimant claimed, and was denied, benefits for the weeks March 9, 2014 through April 19, 2014 (weeks 11-14 through 16-14), the weeks at issue.

(2) Claimant was seeking production work during the weeks at issue. Claimant's labor market was Cornelius, Aloha, Banks, Hillsboro, Southwest Portland and Beaverton, Oregon. In claimant's labor market, production work was customarily performed during all days and all hours.

(3) Claimant is the parent of two children under 13 years of age. From March 9, 2014 through March 25, 2014, claimant's mother-in-law was available to care for her children all days, from 6:00 a.m. until

7:00 p.m. Claimant had no one available to care for her child from 7:00 p.m. 6:00 a.m. Claimant therefore was not capable of working during those hours.

(4) From March 26, 2014 through April 19, 2014, claimant's mother-in-law was available to care for claimant's children all days and all hours. Claimant was willing to and capable of working during all days and all hours.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude claimant was not available for work during weeks 11-14 through 13-14, and agree with the ALJ that claimant was available for work during weeks 14-14 through 16-14.

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). 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 and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* Notwithstanding the provisions of 471-030-0036(3), 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, shall be considered available for work if the work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area and the individual is willing to and capable of working during such shift(s). OAR 471-030-0036(4).

In Hearing Decision 14-UI-16062, the ALJ found that "[c]laimant's lack of child care during the evening hours does not render her unavailable for work because she has child care for at least one shift (day) that the work she is seeking is performed and she is willing to work and capable of reporting for that shift."<sup>1</sup> However, the issue under OAR 471-030-0036(4) is not whether claimant was willing to and capable of working at least one shift, but whether she was willing to or capable of working all but one shift. When a Department representative asked claimant if she was able to work the swing and night shifts, claimant said she was unable to do so because she did not have childcare at night. Transcript at 6. Thus, during weeks 11-14 through 13-14, claimant was not available to work during two of the three shifts production work is performed in her labor market. Because she was not capable of working two of three shifts, and not just "a particular shift," claimant was unavailable for work during weeks 11-14 through 13-14. Claimant had childcare during all shifts during weeks 14-14 through 16-14, and was willing and able to work all days and all hours during those weeks.

Claimant therefore was unavailable for work under OAR 471-030-0036(4) and ineligible for benefits for weeks 11-14 through 13-14, and available for work and eligible for benefits for weeks 14-14 through 16-14.

**DECISION:** Hearing Decision 14-UI-16062 is modified, as outlined above. *Decisión de la Audiencia 14-UI-16062 se ha modificado, de acuerdo a lo indicado arriba.*

---

<sup>1</sup> Hearing Decision 14-UI-16062 at 3.

**DATE of Service: June 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.

*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la (Oregon Court of Appeals, Records Section) Corte de Apelaciones de Oregon, Sección de Registros, 1163 State Street, Salem, Oregon 97310, o visitar el sitio web en el internet en <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.*

*Nota: El vínculo anterior puede no funcionar debido a cambios sin aviso al sitio web en el internet de la Corte de Apelaciones, dádose el caso puede ponerse en contacto con el Registro de Apelaciones (Appellate Records) al (503) 986-5555.*