

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0772

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from February 9, 2014 through February 15, 2014 (decision #154939). Claimant filed a timely request for hearing. On April 16, 2014, ALJ Kirkwood conducted a hearing and issued Hearing Decision 14-UI-15252, affirming the Department's decision. On May 6, 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 written argument in reaching this decision.

FINDINGS OF FACT: (1) On October 3, 2013, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant claimed and was denied unemployment insurance benefits for the week of February 9, 2014 through February 15, 2014 (week 7-14), the week at issue.

(3) Claimant sought work as a teacher. Claimant's labor market was Otis, Lincoln City, and Newport, Oregon.

(4) Claimant traveled to Germany on November 21, 2013, and remained there until February 17, 2014. Claimant had a travel visa for Germany that expired on February 18, 2014. Claimant's travel visa did not authorize her to work in Germany.

(5) From January 11, 2014 to February 7, 2014, claimant worked as a teacher for a school in Frankfurt, Germany in exchange for housing and a stipend. The school had applied for a work permit for claimant. There was no guarantee a work permit would be granted. The employer applied for, and claimant received authorization to work as a volunteer for that school while awaiting a decision regarding the work permit. Claimant was not willing to work as a volunteer after her travel visa expired. The volunteer work authorization was not transferable to other employers in Germany. Claimant could not

accept and report for work for another employer in Germany until after she or the potential employer applied for and obtained a work permit for claimant.

(6) On February 7, 2014, claimant ended her employment with the school in Frankfurt, Germany to travel to Hamburg, Germany to visit her daughter and prepare to return to Oregon before her travel visa expired. Claimant remained in Hamburg, Germany during all of the week at issue. It took claimant approximately six hours to drive from Frankfurt to Hamburg, Germany.

(7) While in Hamburg during the week at issue, claimant conducted a bona fide search for work.

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 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.* An individual who leaves the normal labor market area of the individual for the major portion of any week is presumed to be unavailable for work within the meaning of this section. This presumption may be overcome if the individual establishes to the satisfaction of the Department that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies. ORS 657.155(c). OAR 471-030-0036(6)(a) provides that an individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The Department shall define the geographic area based on those criteria. Where, as here, the Department did 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).

Claimant’s “labor market” was determined by the Department to be Otis, Lincoln City, and Newport, Oregon. Because claimant was in Hamburg, Germany, not her labor market, for all the week at issue, claimant is presumed to have been unavailable for work during that week unless she overcomes that presumption by showing she conducted a bona fide search for work and was “reasonably accessible” to suitable work in the labor market area in which she spent the week at issue.

Claimant established that she conducted a bona fide work search in Hamburg, Germany during the week at issue. However, claimant had work authorization to work for one employer during that time, in Frankfurt, Germany. Frankfurt is a six-hour drive from Hamburg, and claimant ended her job with the employer in Frankfurt on February 7, 2014 so she could visit her daughter and prepare to return to Oregon. Although claimant looked for work in Hamburg, Germany during the week at issue, she did not have a work permit authorizing her to work for an employer there. Thus, claimant was not capable of accepting and reporting for work in Hamburg until after she or the potential employer applied for and obtained a work permit, or at least volunteer work authorization, for claimant. Therefore, claimant

failed to show that she was reasonably accessible to work in the labor market area in which she spent the week. Absent such a showing, claimant failed to overcome the presumption that she was unavailable for work during the week at issue.

Claimant was not available for work during the week at issue, and therefore is ineligible for benefits for week 7-14.

DECISION: Hearing Decision 14-UI-15252 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: June 12, 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.