

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0778

*Affirmed*  
*Ineligible Weeks 41-13 through 46-13*

**PROCEDURAL HISTORY:** On October 31, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 6 through October 26, 2013 (weeks 41-13 through 43-13) (Decision # 164442). Claimant filed a timely request for hearing. On December 11, 2013, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for December 27, 2013 at 9:30 a.m. On January 6, 2014, ALJ Vincent issued Hearing Decision 14-UI-07753, dismissing claimant's request for hearing for failure to appear at the December 27 hearing. On January 28, 2014, claimant filed a request to reopen the hearing. On March 25, 2014, OAH issued notice of a hearing scheduled for April 8, 2014 at 10:45 a.m. to address claimant's reopen request, and, if necessary, the merits of claimant's appeal. On April 8, 2014, ALJ Seideman conducted a hearing, and on April 16, 2014, issued Hearing Decision 14-UI-15241, concluding claimant had shown good cause to reopen the hearing and cancelling Hearing Decision 14-UI-07753, but concluding claimant was not available for work from October 6 through November 16, 2013 (weeks 41-13 through 46-13). On May 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of that portion of Hearing Decision 14-UI-15241 in which the ALJ concluded claimant showed good cause to reopen the hearing. Therefore we did not address that issue in reaching our decision.

Claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for benefits on March 18, 2013. Claimant claimed, but was not paid benefits for the weeks including October 6 through November 16, 2013 (weeks 41-13 through 46-13), the weeks at issue.

(2) During the weeks claimed, claimant sought work as a caregiver and in retail sales. Claimant's labor market area was Gleneden Beach, Lincoln City and Depoe Bay. In claimant's labor market, the customary days and hours for work as a caregiver were all days and all shifts, and for work in retail sales, Sunday through Saturday, 9:00 a.m. to 10:00 p.m.

(3) Claimant was a single mother with four children – three year-old twins, a six year-old and a nine year-old – who shared her residence. In order to work, attend job interviews or Department appointments claimant needed one or more individuals to provide childcare services. Claimant's usual child care provider was her brother who, during the weeks at issue, was staying with relatives in Sweet Home, Oregon, 102 miles away from claimant's residence in Gleneden Beach. In order for claimant's brother to provide child care, claimant needed to provide him with gas money to travel from Sweet Home.

(4) During the week October 6 through 12, claimant missed a scheduled Department appointment due to a lack of child care. During that week and the other weeks at issue, claimant was unable to provide gas money for her brother due to financial difficulties and had not made arrangements for a back-up child care provider in her residential area.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks including October 6 through November 16, 2013 (weeks 41-13 through 46-13), and is ineligible for benefits during those weeks.

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). Among those requirements are that the individual be willing to work full time, part time and accept temporary work opportunities during all of the usual hours and days of the week customary for the work being sought, capable of accepting and reporting for any suitable work opportunities within the labor market and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* A claimant who has been denied unemployment insurance benefits bears the burden of showing that she (or he) is eligible to receive benefits. *Vail v. Employment Department*, 30 Or App 365, 567 P2d 129 (1977).

Here, claimant failed to show that during the weeks at issue she was capable of accepting and reporting for any suitable work opportunities within her labor market because of a lack of reliable child care for her four young children. Claimant was seeking caregiver work which was performed all days and all shifts. She admitted at hearing that she previously told the Department's investigator that, during the weeks at issue, her brother "was the one that was willing to provide me childcare until I had a job, 'cuz I can't afford you know somebody else to do childcare until I actually have a job." Transcript at 24-25. However, due to financial difficulties she could not afford to pay gas money for her brother to travel from Sweet Home, 102 miles away, to stay with her and her children. As a result, she failed to attend a scheduled appointment at a Department office because she had no one to watch her children. Moreover, although the Department investigator gave claimant two days to make arrangements for reliable child care in the event she found work, the child care provider claimant disclosed to the investigator was not capable of watching claimant's four children because of licensing restrictions concerning the number of

children she could watch at one time. Transcript at 23-24, 27-28. Viewing the record as a whole, claimant's inability to obtain reliable childcare during the weeks at issue imposed a condition that limited her opportunities to return to work at the earliest possible time.

Nor was claimant "available for work" under OAR 471-030-0036(4), which provides:

Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her 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:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

The referenced provision provides an exception for individuals who restrict their availability to work to "a particular shift" because of child care issues. Here, claimant's lack of reliable child care was not restricted to a single shift. Because claimant's unavailability for work spanned more than one shift, she cannot be considered "available for work" under OAR 471-030-0036(4).

Claimant was not available for work during the weeks at issue. She is not eligible for benefits for the period October 6 through November 16, 2013 (weeks 41-13 through 46-13), the weeks at issue.

**DECISION:** Hearing Decision 14-UI-15241 is affirmed.

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

**DATE of Service:** June 17, 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.