

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0828

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from March 9, 2014 to March 15, 2014 (decision # 134615). Claimant filed a timely request for hearing. On April 21, 2014, ALJ Monroe conducted a hearing, and on April 28, 2014 issued Hearing Decision 14-UI-16255, concluding claimant was not available for work from March 9, 2014 to April 12, 2014. On May 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In claimant's written argument, she argued that she is considered not available for suitable work because she does not spend full time hours on her sales and marketing activities, but would also not be considered unemployed or eligible for benefits if she did, leaving her in a "catch 22." Claimant is, unfortunately, correct. Under ORS 657.100(1) and (2), only individuals who do not work or work only part time with earnings totaling less than their weekly benefit amounts can be considered "unemployed," and, under ORS 657.155(1), only "unemployed" individuals may be eligible for benefits. Therefore, claimant is correct that, had she worked 40 hours per week, she would not be considered eligible for benefits, even if her full time work did not result in any remuneration paid or payable to her. *See* ORS 657.100(2).

Additionally, ORS 657.155(1)(c) provides that a condition of benefit eligibility is that an individual be "available" for work, which is defined in OAR 471-030-0036(3) mean that the individual must be "willing to work full time," and does not miss any opportunities to work, even due to illness or other situations outside the individual's control. Because the record shows that claimant had the opportunity to work full time, and did not, she cannot be considered "available" for work. That is so regardless that no remuneration was paid or payable to her regardless how many hours she worked, and regardless that she limited her hours for the purpose of devoting time to a work search for paying employment, and regardless that claimant's particular circumstances did place her in "catch 22"-type situation in which she could not be eligible for benefits whether she worked full or part time. For those reasons, and those described in the hearing decision under review, we must conclude that claimant was not available for work.

EAB reviewed the entire hearing record and claimant's written arguments. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-16255 is affirmed.

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

DATE of Service: June 20, 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. 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.

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