

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0836

*Modified*  
*Ineligible Weeks 12-14 and 14-14*  
*Eligible Weeks 15-14 through 18-14*

**PROCEDURAL HISTORY:** On April 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was unavailable for work from March 16, 2014 to March 22, 2014 (week 12-14) and March 30, 2014 to April 5, 2014 (week 14-14) (decision # 90059). Claimant filed a timely request for hearing. On May 6, 2014, ALJ Triana conducted a hearing and on May 7, 2014 issued Hearing Decision 14-UI-16992, concluding claimant was unavailable for work from March 16, 2014 to March 22, 2014 (week 12-14) and March 30, 2014 to May 3, 2014 (week 14-14 through 18-14). On May 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On March 20, 2014, claimant filed an initial claim for benefits. Her weekly benefit amount was \$256. Claimant claimed benefits for the week of March 16 through 22, 2014 (week 12-14), and the weeks from March 30 through May 3, 2014 (weeks 14-14 through 18-14), the weeks at issue.

(2) During the weeks at issue, claimant searched for various types of work, including work as a caregiver. The usual hours and days of the week customary for work as a caregiver included all hours, all days of the week.

(3) During week 12-14, claimant completed her last final exam of the winter term at community college. Claimant was unwilling to work during the time she was scheduled to take the exam.

(4) During week 14-14, claimant started her spring term classes at community college. Attending community college cost claimant approximately \$1,200 per term, which she paid through a Pell grant and student loans. Claimant believed she could retain her Pell grant if she withdrew from classes, but was unwilling to work during the times that conflicted with her class schedule.

(5) Toward the end of week 14-14, however, a Department representative explained to claimant that if she was not willing to withdraw from classes in order to work, she was not eligible for unemployment insurance benefits. Claimant preferred to be eligible for weekly benefits, even if the meant withdrawing from classes in order to work.

(6) During weeks 15-14 through 18-14, claimant asked potential employers if they were willing to accommodate her class schedule. However, she did not impose that as a condition of employment, and was willing withdraw from classes in order to work. On one occasion, claimant told a potential employer that she intended to enroll in another class, and asked if the employer if it was willing to accommodate her. The potential employer declined to accommodate her, and claimant did not enroll in the class.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was not available for work during weeks 12-14 (March 16, 2014 through March 22, 2014) and 14-14 (March 30, 2014 through April 5, 2014), and therefore is ineligible for benefits for those weeks. However, we disagree with the ALJ and conclude that claimant was available for work during weeks 15-14 through 18-14 (April 6, 2014 through May 3, 2014). Claimant therefore is eligible for benefits for those weeks.

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 during all of the usual hours and days of the week customary for the work being sought, and refrain from imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time. *Id.*

In Hearing Decision 14-UI-16992, the ALJ concluded that claimant was unwilling to work during hours that conflicted with her schedule during any of the weeks at issue, noting that claimant asserted that she was willing to withdraw from classes in order to work only after learning that she otherwise was ineligible for benefits, and still asked potential employers to accommodate her class schedule.<sup>1</sup> The ALJ further noted that although claimant did not enroll in a course a potential employer refused to accommodate, it was a course claimant had not started.<sup>2</sup> Finally, the ALJ noted that claimant had not discussed with her teacher the possibility of changing her class schedule or missing classes in order to work, and asserted that claimant would have done so if truly willing to withdraw from classes in order to work.<sup>3</sup>

We agree with the ALJ that the record shows that claimant was unwilling to withdraw from classes in order to work until she learned that she otherwise was ineligible for benefits. Claimant therefore was unwilling to work during all the hours and days customary for the caregiver work she sought during weeks 12-14 and 14-14, and is ineligible for benefits for those weeks.

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<sup>1</sup> Hearing Decision 4-UI-16992 at 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

However, we do not find it implausible that claimant preferred to be eligible for up to \$256 in weekly benefits, even if she was required to repay some or all of the \$1,200 she receive in grants and student loans. We therefore do not find it implausible that claimant became willing to withdraw from classes in order to work after learning that she otherwise was ineligible for benefits. Although claimant asked potential employers to accommodate her class schedule, the fact that she did not enroll in a course a potential employer refused to accommodate shows that claimant did not impose accommodating her class schedule as a condition of employment. Finally, claimant's failure to discuss with her teacher the possibility of changing her class schedule or missing classes in order to work is not material to whether she would have withdrawn from classes in order to work if necessary.

In sum, absent a basis for concluding that claimant was not a credible witness, we find in accordance with her testimony that she was willing to withdraw from classes in order to work during weeks 15-14 through 18-14 (April 6, 2014 through May 3, 2014). Claimant therefore was willing to work during all of the usual hours and days of the week customary for the caregiver work she sought, and did not impose conditions which substantially reduced her opportunities to return to work at the earliest possible time. Claimant therefore was available for work during weeks 15-14 through 18-14, and is eligible for benefits for those weeks.

**DECISION:** Hearing Decision 14-UI-16992 is modified, as outlined above.

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

**DATE of Service: June 23, 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.

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