

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1017

Reversed
Eligible

PROCEDURAL HISTORY: On April 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from April 20, 2014 through April 26, 2014 (week 17-14) (decision # 71746). Claimant filed a timely request for hearing. On June 2, 2014, ALJ M. Davis conducted a hearing, and on June 5, 2014 issued Hearing Decision 14-UI-18997, concluding that claimant was not available for work from April 20, 2014, through May 17, 2014 (weeks 17-14 through 20-14).¹ On June 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed his initial claim for benefits on December 19, 2013. Claimant claimed benefits for the period from April 29, 2014 through May 17, 2014 (weeks 17-14 through 20-14).

(2) Claimant is seeking work as a welder. Claimant's labor market is Portland, Beaverton, Milwaukie, Oregon City, Clackamas, Gladstone, Gresham and Vancouver, Washington.

(3) Prior to January 3, 2014, claimant learned that he was required to serve an 18-day sentence in the Multnomah County jail. Claimant was given the choice of serving the 18 days consecutively or serving his sentence on Saturday and Sunday, for nine weeks.

(4) On January 3, 2014, claimant contacted the Department and asked what days of the week he was expected to be available to work to be eligible for benefits. Claimant had a court hearing scheduled for March 3, 2014, and wanted to make an appropriate decision as to how he would serve his jail sentence. An authorized Department representative told claimant that the customary days and hours for welding work were Monday through Friday, day and swing shifts, and he must be available those days and hours

¹ At the hearing, the parties agreed that the ALJ could take jurisdiction and determine claimant's eligibility for all weeks claimed and denied.

to be eligible for benefits. Based on this information, claimant chose to serve his sentence on the weekends.

(5) The Department realized it had given claimant incorrect information because welding work is customarily performed all days of the week and all shifts. The Department was unsuccessful in reaching claimant by telephone, and on April 7, 2014, sent claimant a letter. The letter advised claimant that he needed to be available all days and all shifts because those were the days and hours welding work was customarily performed.

(6) By the time claimant received the April 7 letter, he could not change the arrangements he had made to serve his sentence. Claimant was incarcerated every Saturday and Sunday, from 8 a.m. to 8 p.m., during the period from March 15, 2014 through May 11, 2014. Claimant was not free to leave during the days he was incarcerated.

(7) On April 7, 2014, the Department served notice of an administrative decision concluding claimant was unavailable for work from March 9, 2014 to March 29, 2014 (weeks 11-14 to 13-14) (decision # 140722). Claimant filed a timely request for hearing. On May 1, 2014, ALJ Shoemake conducted a hearing, and on May 5, 2014, issued Hearing Decision 14-UI-16793, concluding claimant was unavailable for work from March 9, 2014 through April 19, 2014 (weeks 11-14 to 16-14).

(8) On May 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On June 5, 2014, EAB issued a decision setting aside Hearing Decision 14-UI-16793. EAB reversed and remanded the matter so that the ALJ could further develop the hearing record to determine whether the Department was estopped from denying claimant benefits because a Department representative gave claimant incorrect information regarding the customary days and hours for welding work.

(9) On June 19, 2014, ALJ Shoemake held a hearing pursuant to the remand order and on July 1, 2014, issued Hearing Decision 14-UI-20670, concluding that claimant was not available for work, but that the Department is estopped from denying benefits for the period from March 9, 2014 through April 19, 2014 (weeks 11-14 through 16-14).²

CONCLUSION AND REASONS: Claimant was not available for work, but the Department is estopped from finding him ineligible for unemployment insurance benefits on the basis that he was not available for work from April 20, 2014 through May 17, 2014 (weeks 17-14 through 20-14).

To be eligible to receive benefits, a claimant must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An claimant is “available for work” for purposes of ORS 657.155(1)(c) if the claimant is willing to work during all the usual days and hours customary for the work sought; capable of reporting to all full time, part time, and temporary work opportunities throughout the labor market; and refrains from imposing conditions that limit the claimant’s opportunities to return to work at the earliest possible time. OAR 471-030-0036(3) (February 23, 2014).

² We admit Hearing Decision 14-UI-20670 into evidence as EAB Exhibit 1. OAR 471-041-0090(2) (October 26, 2006). A copy of Exhibit 1 is attached to this decision. Any party that objects to our admission of this exhibit may submit such objection to this office in writing, setting forth the basis of the objection, within 10 days of the date on which this decision is mailed. Unless an objection is received and sustained, the exhibit will remain part of the record.

Here, claimant was incarcerated on Saturday and Sunday during the period claimed – from April 20, 2014 through May 17, 2014. Claimant sought work as a welder; welding work is customarily performed all days and all shifts. As a result of his incarceration, claimant was not capable of reporting for all work opportunities in his labor market and was, therefore, unavailable for work.

The Department is, however, estopped from denying claimant benefits. The doctrine of equitable estoppel will be applied against an agency if it is shown that the person asserting it was misled by the agency and justifiably and detrimentally relied on the misleading conduct. *Employment Division v. Western Graphics Corp.*, 76 Or App 608, 710 P2d 788 (1985); *Employment Department v. Furseth*, 140 Or App 464, 915 P2d 1043 (1996). Here, a Department representative mistakenly told claimant that welding work was customarily performed Monday through Friday, day and swing shifts. Based on this representation, claimant chose to serve his jail sentence on weekends, so that he would be capable of reporting for the welding work he sought. By the time the Department advised claimant that the initial advice he received was incorrect and that welding work was customarily performed all days and all shifts, claimant was unable to change the arrangements for serving his sentence. Thus, the record shows that claimant was misled by the Department and relied on the misleading advice to his detriment. The Department is estopped from finding claimant ineligible for benefits during the weeks at issue on the basis that he was not available for work. Claimant is eligible for benefits for the period from April 20, 2014 through May 17, 2014 (weeks 17-14 through 20-14).

DECISION: Hearing Decision 14-UI-18997 is set aside, as outlined above.

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

DATE of Service: July 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 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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