

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1029

Affirmed
Ineligible

PROCEDURAL HISTORY: On May 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from April 13 through May 3, 2014 decision # 131954). Claimant filed a timely request for hearing. On June 3, 2014, ALJ Murdock conducted a hearing, and on June 6, 2014 issued Hearing Decision 14-UI-19189, affirming the Department's decision, and concluding that claimant also was not available for work from May 4 through 31, 2014. On June 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from April 13 through May 31, 2014 (weeks 16-14 through 22-14), the weeks at issue. The Department did not pay claimant benefits for those weeks.

(2) During the weeks at issue, claimant sought telemarketing and sales work. The usual hours and days customary for such work were 8:00 a.m. to 7:00 p.m. any day of the week.

(3) During the weeks at issue, claimant was attending classes as Portland Community College (PCC) Mondays and Wednesdays from 3:00 p.m. to 4:50 p.m., and Tuesdays and Thursdays from 1:00 p.m. to 2:50 p.m., and 6:30 p.m. to 8:50 p.m. Claimant could not change his class schedule, and had invested \$2,850 from student loans in tuition, books and fees for the term.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant failed to establish that he was available for work during the weeks 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 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. *Id.* Where, as here, the Department did not initially pay a claimant benefits for the weeks at issue, the claimant has the burden to establish by a preponderance of evidence that he is eligible for benefits for those weeks. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In the present case, claimant's class schedule during the weeks at issue conflicted with the usual hours and days of the week customary for the work he sought. At hearing, claimant testified that he was willing to drop classes or quit school for full time work that conflicted with his class schedule. Audio Record at 13:15. However, claimant did not testify that he was willing to drop classes or quit school for part-time, temporary work opportunities that conflicted with his schedule. Claimant therefore failed to establish that he met the requirements of OAR 471-030-0036(3) to be considered for work for purposes of ORS 657.155(1)(c).

We therefore conclude that claimant was not available for work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 14-UI-19189 is affirmed.

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

DATE of Service: July 18, 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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