

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-1046**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On April 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work for the week April 6 through April 14, 2014 (no decision #). Claimant filed a timely request for hearing. On May 28, 2014, ALJ M. Davis conducted a hearing, and on May 29, 2014, issued Hearing Decision 14-UI-18652, concluding claimant was available for work during that week. However, on June 10, 2014, ALJ M. Davis issued Hearing Decision 14-UI-19336, amending Hearing Decision 14-UI-18652 by concluding that claimant was not available for work for the week April 6 through April 14, 2014 and affirming the Department's decision. On June 17, 2014, claimant filed an application for review of Hearing Decision 14-UI-19336 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for benefits on September 8, 2013. Claimant filed a weekly claim and was denied benefits for the week including April 6 through April 12, 2014 (week 15-14), the week at issue.

(2) Claimant's regular occupation was education administrator. Claimant resided in Eugene, Oregon and her normal labor market area was the Eugene, Coburg and Springfield area. Because of the nature of her regular occupation, claimant often sought work throughout the United States, outside of her normal labor market area.

(3) From April 5 through 13, 2014, claimant was outside of the United States on a Caribbean cruise. During that week, she used the internet connection aboard her cruise ship to apply for two jobs in Massachusetts in her regular occupation of education administrator. She sought no other work.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the week at issue.

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). At issue in this case is claimant's

availability for work during the week at issue when she was outside the United States on a Caribbean cruise.

An individual who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work. ORS 657.155(2). This presumption may be overcome if the individual establishes that the individual has conducted a *bona fide*<sup>1</sup> search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week. *Id.*

Here, the Department's witness asserted that claimant's normal labor market was the Eugene, Coburg and Springfield area. Audio Record ~ 6:45 to 7:05. Claimant asserted that her labor market was the entire United States due to the nature of her regular occupation as an education administrator. Audio Record ~ 12:00 to 12:10. Even assuming without deciding that claimant was correct on that issue, claimant was outside of that labor market area during the entire week at issue. Therefore, under ORS 657.155(2), it is presumed that claimant was unavailable for work during that week.

Claimant admitted that she sought work only within the United States while in the foreign labor market of the Caribbean. Audio Record ~ 10:50 to 12:00, 16:45 to 17:05. Consequently, she failed to overcome the presumption that she was unavailable for work by meeting her burden to show that she conducted a *bona fide* search for work, and was reasonably accessible to suitable work, in the labor market area in which she spent the week at issue. Under ORS 657.155(2), claimant was not available for work and accordingly is ineligible for benefits for the week April 6 through 12, 2014 (week 15-14).

**DECISION:** Hearing Decision 14-UI-19336 is affirmed.

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

**DATE of Service:** July 22, 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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<sup>1</sup> A "bona fide" effort is one made in "good faith" with "sincere and wholehearted intent." See, *Webster's Third New International Dictionary* 250 (unabridged ed 2002).