

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1268

Affirmed
Ineligible

PROCEDURAL HISTORY: On June 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 8 through 14, 2014 (decision # 81458). Claimant filed a timely request for hearing. On July 16, 2014, ALJ S. Lee conducted a hearing, and on July 23, 2014 issued Hearing Decision 14-UI-22042, affirming the Department's decision. On July 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits, effective October 27, 2013.

(2) Claimant was participating in a sheet metal worker apprenticeship program. Claimant was required to attend an instruction program related to the apprenticeship as a condition of his continued employment as a sheet metal worker apprentice.

(3) Claimant attended the required instruction program from Monday, October 28 through Friday, November 1, 2013. Claimant claimed and was allowed waiting week credit for the week of October 27 through November 2, 2013 (week 44-13).

(4) Claimant attended the required instruction program from Monday, December 2 through Friday, December 6, 2013. Claimant claimed and was allowed benefits for the week of December 1 through 7, 2013 (week 49-13).

(5) Claimant attended the required instruction program from Monday, January 20 through Friday, January 24, 2014. Claimant claimed and was allowed benefits for the week of January 19 through 25, 2014 (week 04-14).

(6) Claimant attended the required instruction program from Monday, March 10 through Friday, March 14, 2014. Claimant claimed and was allowed benefits for the week of March 9 through 15, 2014 (week 18-14).

(7) Claimant was required to attend the instruction program from 7:00 a.m. to 3:30 p.m. Monday, June 9 through Friday, June 13, 2014. If claimant did not attend the program, his apprenticeship would be terminated, and he could not work for an employer as a sheet metal worker apprentice. Claimant therefore had to take June 9 through 13, 2014 off from work as a sheet metal worker apprentice with his current employer to attend the instruction program. Claimant claimed benefits for the week of June 8 through 14, 2014 (week 24-14), the week at issue. The Department did not pay claimant benefits for that week.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant was not available for work during week 24-14, and not eligible for benefits under ORS 657.357.

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). 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 capable of accepting and reporting for any suitable work opportunities during the week claimed. *Id.* However, ORS 657.357 provides that an individual participating in an apprenticeship program who is otherwise eligible for unemployment insurance benefits shall not be unavailable for work, or ineligible for benefits or waiting week credit, solely by reason of attending a program of related instruction when such attendance does not exceed five weeks during the benefit year of the individual, and when such attendance is required as a condition of the individual’s continued employment. Where, as here, the Department does not pay a claimant benefits for the week at issue, the claimant has the burden to establish by a preponderance of evidence that he is eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In the present case, it is undisputed that during the week at issue, claimant was participating in an apprenticeship program and attending a program of related instruction that he was required to attend as a condition of his continued employment. However, it also is undisputed that claimant already had attended the instruction program for five weeks during his benefit year. Claimant therefore was required to be “available for work” during the week at issue, as defined under OAR 471-030-0036(3), to be eligible for benefits for that week. If claimant did not attend the required instruction program during the week at issue, his apprenticeship would have terminated, and he could not have worked for an employer as a sheet metal worker apprentice. Claimant therefore had to take June 9 through 13, 2014 off from work as a sheet metal worker apprentice with his current employer to attend the instruction program. He therefore was not capable of accepting and reporting for any suitable work opportunities during the week at issue.

Claimant was not available for work during the week at issue. He therefore is ineligible for benefits for that week.

DECISION: Hearing Decision 14-UI-22042 is affirmed.

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

DATE of Service: August 26, 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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