

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1279

Affirmed
Ineligible

PROCEDURAL HISTORY: On June 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 4 through 31, 2014 (decision # 85853). Claimant filed a timely request for hearing. On June 26, 2014, ALJ R. Frank conducted a hearing, and on July 7, 2014 issued Hearing Decision 14-UI-20932, concluding that claimant was not available for work from May 4 through June 14, 2014. On July 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits. Claimant claimed benefits for the weeks from May 4 through June 14, 2014 (weeks 19-14 through 24-14), the weeks at issue.

(2) During the weeks at issue, claimant sought various types of work. The usual hours and days of the week customary for the types of work claimant sought included weekday mornings, and Saturday mornings.

(3) In late April or early May 2014, claimant told the employer's owner that she did not want to work weekday mornings unless no other employee was available to work. The employer's owner therefore scheduled other employees to work weekday mornings.

(4) On June 8, 2014, claimant informed the employer's owner that she was willing to work all days except Saturday mornings.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was not available for work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must be available for work during the 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 that substantially reduce the individual’s opportunities to return to work at the earliest possible time. *Id.*

In notifying the employer’s owner that she did not want to work weekday mornings unless no other employee was available to work, claimant imposed a condition that substantially reduced her opportunities to work during weeks 19-14 through 23-13. During week 24-13, claimant was unwilling to work Saturday morning, and therefore unwilling to work during all of the usual hours and days customary for the types of work she sought. Claimant therefore was not available for work during the weeks at issue, and not eligible for benefits for those weeks.

DECISION: Hearing Decision 14-UI-20932 is affirmed.

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

DATE of Service: August 29, 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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