

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1340

Affirmed
Ineligible

PROCEDURAL HISTORY: On July 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of May 11, 2014 through June 7, 2014 (decision # 82569). Claimant filed a timely request for hearing. On August 1, 2014, ALJ Shoemake conducted a hearing, and on August 8, 2014 issued Hearing Decision 14-UI-23111, affirming the Department's decision. On August 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On October 8, 2013, claimant filed an initial claim for benefits. Claimant's claim was valid with a weekly benefit amount of \$538.¹ Claimant claimed and was paid benefits during the weeks of May 11, 2014 through June 7, 2014 (weeks 20-14 through 23-14), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a data analyst. Claimant lived with his wife and daughter in Salem, Oregon. Claimant's labor market was Salem and the surrounding areas.

(3) Sometime in approximately April 2014, claimant made plans to travel to California to visit his parents while his father had minor surgery on May 19, 2014. Claimant planned to travel by plane to California on May 17, 2014 and to return to his home in Salem on May 20, 2014.

(4) On approximately April 28, 2014, claimant received an oral offer of employment from the Oregon Department of Transportation (ODOT). Claimant tentatively accepted that offer. On approximately that same day or a very few days later, claimant received an oral offer of employment from CompuCom.

¹ We take notice of this fact, which is contained in Employment Department records. Any party who objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at EAB.

The position with CompuCom was expected to start sometime between approximately May 7, 2014 and May 12, 2014. Audio at ~27:08, ~31:22. When claimant was notified of that starting day, he negotiated with CompuCom to change the start of this job until approximately May 21, 2014 to allow him to visit his parents, as planned, in California. When CompuCom agreed to this change, he accepted its offer. On approximately May 5, 2014, claimant received a written offer of employment from ODOT. The job that ODOT offered was to start on May 19, 2014. Claimant promptly contacted the person who was to become his supervisor at ODOT, and the supervisor agreed to change claimant's start date to May 21, 2014 to leave claimant's plans to travel to California undisturbed. Claimant accepted the job offer from ODOT and notified CompuCom that he was declining its offer of employment.

(5) As he had planned, claimant travelled to California to visit his parents on May 17, 2014. Claimant travelled back to Oregon on May 20, 2014. On the return airplane flight, claimant's mother notified claimant that his wife had suddenly and unexpectedly died. After claimant returned to his home in Salem, he contacted ODOT and arranged to delay the start of that job so that he could make arrangements for his wife's funeral, as well as to deal with other matters arising from her death. During the period after claimant returned to Salem and before he started work at ODOT, claimant grieved for his deceased wife, and tended to the emotional needs of his and his wife's daughter.

(6) On June 8, 2014, claimant started his new job with ODOT.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks of May 11, 2014 through June 7, 2014 and was not eligible to receive benefits during those weeks.

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 willing to work, willing to accept and capable of reporting to all full time, part time and temporary work opportunities throughout the labor market during all of the usual hours and days customary for the work sought and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* Because the Department paid benefits to claimant during the weeks at issue, claimant has the burden to demonstrate that he was available during those weeks by a preponderance of the evidence. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

With respect to whether claimant was available from May 11, 2014 through May 20, 2014 (week 20-14 and part of week 21-14), claimant agreed that he arranged to delay the start dates of the jobs offered by both CompuCom and ODOT until May 21, 2014 to accommodate his scheduled visit with his parents in California. Audio at ~15:40, ~16:44, ~17:40. Claimant's actions most strongly suggest that he was unwilling to accept any work opportunities during the period of May 11, 2014 through May 20, 2014 if they might interfere with his planned trip. They also suggest that claimant did not intend to start actually working at a job until after he returned to Oregon from California. Claimant made the point at hearing that he was careful continue his work search efforts during this time so that he remained in technical compliance with Department's weekly reporting requirements. Audio at ~28:46. However, the technical formality of a work search, alone, does not establish that claimant was available if he was, in fact, not willing to accept work certain work during that time, *i.e.*, work that might disturb his travel

plans. On this record, claimant's rebuttal was insufficient to establish that claimant's planned trip to California between May 17, 2014 and May 20, 2014 was not a condition that, during the period of May 11, 2014 through May 20, 2014 limited his opportunities to return to work at the earliest possible time.

With respect to whether claimant was available after May 20, 2014 until he started his new job at ODOT on June 8, 2014 (part of week 21-14 through week 23-14), claimant agreed that due to his wife's unexpected death, his need to make various arrangements arising from her death and the emotional needs of himself and his daughter, he was not in a position to work until June 8, 2014. Audio at ~23:55, ~24:20, ~30:45; *see also* Claimant's Written Argument at 2. Although the reasons that claimant did not work during this time are understandable and compelling, the fact remains that there are no exceptions to the requirement of availability based on exigent personal circumstances and EAB has not been delegated the authority to create one. *See* OAR 471-030-0036(3); Claimant's Written Argument. Further, we have no reason to disbelieve claimant's statement that, despite the circumstances that prevented him from working during these weeks, he continued to look for work. Claimant's Written Argument. As discussed above, however, that claimant may have conducted a technically adequate work search does not absolve him from the requirement that he must also have remained willing and capable of reporting for all suitable work opportunities to satisfy the requirement of availability. *See* OAR 471-030-0036(3)(b). On this record, although we are sensitive to claimant's reasons for not working, claimant did not establish that he was willing and capable of reporting for all suitable work opportunities during the period of May 21, 2014 through June 7, 2014.

Claimant was not available for work during the weeks of May 11, 2014 through June 7, 2014 (weeks 20-14 through 23-14). Claimant was not eligible to receive benefits during those weeks.

DECISION: Hearing Decision 14-UI-23111 is affirmed.

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

DATE of Service: September 17, 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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