

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1415

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On July 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able or available for work from June 15, 2014 through July 12, 2014 (weeks 25-14 through 28-14) (decision # 153122). Claimant filed a timely request for hearing. On August 15, 2014, ALJ Wyatt conducted a hearing, and on August 21, 2014 issued Hearing Decision 14-UI-23853, concluding claimant was able but not available for work from June 15, 2014 through July 12, 2014 (weeks 25-14 through 28-14). On August 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.<sup>1</sup>

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 14-UI-23853 is affirmed.

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<sup>1</sup> Even if we had considered claimant's written argument, it would not have changed our decision. In his argument claimant contends "no work was offered to me by forest (sic) Grove Rehab." The record shows, however, that on March 10, 2014, the employer granted claimant medical leave under the Family Medical Leave Act (FMLA). (Audio ~ 16:50). Claimant was released by his doctor to return to work on June 9, 2014. (Exhibit 1). Claimant contacted the person in charge of staffing for the employer who told claimant that his position had been filled, that claimant needed to contact the employer's director of nursing, and that the director of nursing would get back to claimant. (Audio ~ 22:01 to 22:21). Claimant heard nothing from the employer for a week, and then applied for unemployment. (Audio ~ 23:09). As the ALJ correctly pointed out in his decision, OAR 471-030-0036(3)(c) requires that under ORS 657.155(1)(c),<sup>1</sup> an individual shall be considered available for work if, at a minimum, he is not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time. By failing to pursue contact with his employer to present his medical release and resume work during the period at issue, from June 15, 2014 through July 12, 2014, claimant imposed a condition which substantially reduced his opportunity to return to work.

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

**DATE of Service: September 15, 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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