

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1771

*Affirmed
Ineligible*

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from August 31 through September 27, 2014 (decision # 121643). Claimant filed a timely request for hearing. On November 3, 2014, ALJ Lohr conducted a hearing, and on November 4, 2013 issued Hearing Decision 14-UI-28106, concluding that claimant was not available for work from August 31 through October 25, 2014. On November 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from August 31 through October 25, 2014 (weeks 36-14 through 43-14), the weeks at issue. The Department did not pay claimant benefits for those weeks.¹

(2) During the weeks at issue, claimant sought various types of work, including work as a caregiver. The usual hours and days of the week customary for work as a caregiver were all hours and days of the week. Claimant's labor market was Cottage Grove, Creswell, Eugene and Springfield, Oregon.

(3) During the weeks at issue, claimant cared for his father, who suffered from congenital heart and renal failure.

CONCLUSIONS AND REASONS: Claimant failed to establish that he was available for work during the weeks at issue.

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, 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.

To be eligible to receive benefits, unemployed individuals must be available for 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 during all of the usual hours and days of the week customary for the work being sought, and capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought. *Id.* Where, as here, the Department did not pay a claimant benefits, the claimant has the burden to establish by a preponderance of evidence that he is eligible for those benefits. See *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

At hearing, the Department’s witness testified that on October 1, 2014, claimant told her that during weeks 36-14 through 40-14, he cared for his father 4 to 5 hours per day, and relied on his father, who lived approximately 30 minutes away, for transportation. Audio Record at 9:00-15:30. According to the Department’s witness, claimant told her that he was looking for work in the health care industry “once I get [my father] settled into a place,”² and that he could accept work in his labor market “when [claimant’s] car is fixed. Audio Record at 10:30. Although claimant disputed the Department witness’ testimony,³ we find the evidence on those issues, at best, equally balanced. Claimant therefore failed to establish by a preponderance of evidence that he was willing to work during all of the usual hours and days of the week customary for the caregiver work he sought, or that he was capable of accepting and reporting for any suitable work opportunities within his labor market. Nor did claimant establish by a preponderance of evidence that his circumstances changed after week 40-14.

Claimant therefore failed to establish that he was available for work during the weeks at issue, and is not eligible for benefits for those weeks.

DECISION: Hearing Decision 14-UI-28106 is affirmed.

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

DATE of Service: December 16, 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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² Audio Record at 9:30.

³ Audio Record at 15:30-21:50.