

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1841

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 5, 2014 to October 11, 2014 (decision # 73536). Claimant filed a timely request for hearing. On November 25, 2014, ALJ R. Frank conducted a hearing, and on December 1, 2014 issued Hearing Decision 14-UI-29569, affirming the Department's decision. On December 2, 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 September 21, 2014, claimant filed an initial claim for unemployment insurance benefits. He filed a weekly claim for benefits for the week of October 5, 2014 to October 11, 2014, the week at issue.

(2) Claimant's labor market included Gresham, Oregon and surrounding areas. During the week at issue, claimant sought work in pub and property management. The customary days and hours for pub and property management work in claimant's labor market included all days, day and swing shifts, from 6:00 a.m. to 12:00 a.m.¹

(3) From 11:06 p.m. on October 8, 2014 until 1:39 a.m. on October 9, 2014, claimant was incarcerated in Multnomah County, Oregon.

¹ In the administrative decision on review, the Department found as fact that the usual hours and days customary for the types of work claimant sought during the week at issue included all days, day and swing shifts, from 6:00 a.m. to 12:00 a.m. *See* decision # 73536. That information is necessary to complete the record in this case, and, therefore, is received into evidence. Any party that objects to our receipt of that evidence into the record 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 (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). To be considered available for work, an individual must 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 that work. OAR 471-030-0036(3) (February 23, 2014).

The usual hours and days of the week customary for the work claimant sought included the hour of 11:00 p.m. to 12:00 a.m. every day of the week. Therefore, in order to be considered available for work for the purposes of being eligible for unemployment insurance benefits, claimant must have been capable of reporting to work opportunities that hour during all of the week at issue. Because claimant was incarcerated from 11:06 p.m. to 12:00 a.m., he was not capable of reporting for work opportunities as required.

The fact that the record shows claimant's unavailability spanned only 54 minutes of October 8th, he performed work seeking activities on both October 8th and October 9th, and he did not miss any actual opportunities to work because of his incarceration do not change the outcome of this decision. The applicable administrative rule requires that an individual remain available in the case of work, without exception, and without respect to whether any actual opportunity to perform work was lost.

Claimant was not available for work during the week at issue because he was incarcerated, and, therefore, he is ineligible to receive benefits for that week. Having so concluded, we need not and do not reach a determination about claimant's work search activities for the same week.

DECISION: Hearing Decision 14-UI-29569 is affirmed.

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

DATE of Service: January 13, 2015

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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