

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0163

Hearing Decision 15-UI-33339 Affirmed
Disqualification
Hearing Decision 15-UI-33340 Reversed
Eligible

PROCEDURAL HISTORY: On January 6, 2015, the Oregon Employment Department (the Department) served two notices of administrative decision, the first concluding that claimant voluntarily left work without good cause (decision # 70929) and the second concluding that claimant was not available for work during the weeks of November 9, 2014 through November 29, 2014 (decision # 72753). Claimant filed timely requests for hearing on both decisions. On February 9, 2015, ALJ Murdock conducted two hearings, and on February 11, 2013 issued Hearing Decision 15-UI-33339, affirming decision #70929 and Hearing Decision 15-UI-33340, affirming decision # 72753. On March 3, 2015, claimant filed applications for review of both hearing decision with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-33339 and 15-UI-33340. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0163 and 2015-EAB-0164).

Claimant submitted a written argument in which she repeated in detail her hearing testimony, offered additional information, including copies of the employer's disciplinary policies, and offered a statement from a witness about claimant's lack of training and certain of the employer's practices. To the extent the argument recited facts about which witnesses testified at the hearing, it is repetitive and does not require consideration. To the extent that claimant offered additional information in the form of the witness's statement, it is not relevant to any issues about the nature of the work separation or whether claimant was available to work during the weeks after the work separation. Under OAR 471-041-0090(2) (October 29, 2006), EAB did not consider the information offered in claimant's argument. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

REVIEW OF HEARING DECISION 15-UI-33339

Claimant contended at hearing that the employer discharged her because it did not allow her to work after she gave the employer written notice on October 10, 2014 that she intended to resign in two weeks. However, she did not dispute the employer's evidence that after she gave the written notice to the employer, she orally told the new acting manager that she did not want to be scheduled for any work during the notice period. Transcript at 11, 22, 30, 37-45. This undisputed evidence shows that it was claimant who escalated the date of her leaving to October 11, 2014. Her departure before the end of the two weeks stated in the written notice was therefore not due to the employer's unwillingness to allow claimant to continue working through the notice period but resulted from claimant's subsequent instructions. We agree with the ALJ that the preponderance of the reliable evidence shows that claimant voluntarily left work on December 11, 2014. We also agree with the ALJ that claimant did not establish that the contract she had made with the employer prevented the employer from assigning her to a different position unless she had previously been formally disciplined for violations of her managerial duties. Transcript at 16, 38. For the reasons that the ALJ stated, we further agree that claimant's demotion from a managerial position was not a grave reason to leave work.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 15-UI-33339 is **adopted**.

REVIEW OF HEARING DECISION 15-UI-33340

FINDINGS OF FACT: (1) Sometime before October 21, 2014, claimant began attending Chemeketa Community College (Chemeketa). On two occasions before October 21, 2014, claimant dropped out of Chemeketa in order to obtain or maintain a job.

(2) On September 20, 2014, claimant enrolled at Chemeketa for fall term 2014-2015. During that term, claimant took classes on Mondays and Wednesdays from 2:20 p.m. to 4:20 p.m. and 6:00 p.m. to 7:20 p.m. Chemeketa's fall term ended on December 13, 2014. Claimant paid \$2,000 out of pocket to attend Chemeketa during that term.

(3) On October 21, 2014, claimant filed online an initial claim for unemployment benefits. The claim was determined valid. When claimant filed the claim online, she disclosed that she was taking classes at Chemeketa. In response to a student eligibility questionnaire that was part of the online claims process, claimant indicated that she was not willing to "change her class schedule to accept work." Audio at 4:34. Claimant claimed benefits during the weeks of November 9, 2014 through November 29, 2014 (weeks 46-14 through 48-14), the weeks at issue.

(4) During the weeks at issue, claimant sought work as a receptionist, medical assistant and food service worker. The days and hours customary for work as a receptionist in claimant's labor market were Monday through Friday, 6:00 a.m. to 6:00 p.m. The days and hours customary for work as a medical assistant or as a food service worker were Sunday through Saturday, all times.

(5) During the weeks at issue, claimant applied for work that, if it were offered to her, would conflict with her scheduled classes at Chemeketa. Audio at ~12:21. If an employer offering work to claimant was not willing to work around claimant's class schedule, claimant would drop her classes at Chemeketa to order to take the job. Audio at ~9:30. When claimant had previously been employed, she would miss her scheduled classes if her work schedule conflicted with her class schedule. Audio at ~10:50.

CONCLUSIONS AND REASONS: Claimant was available for work during the weeks of November 9, 2014 through November 29, 2014.

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 and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

In Hearing Decision 15-UI-33340, the ALJ disregarded claimant's testimony that she would drop school if she was offered work that conflicted with her class schedule. The ALJ reasoned that claimant's testimony about her intentions was not credible because claimant would lose the \$2,000 she had invested to take classes during fall term 2014 if she withdrew from school and, because it was inconsistent with the responses that she had entered on October 21, 2014 in the student eligibility questionnaire, her testimony was "merely self-serving." Hearing Decision 15-UI-33340 at 2. Because the ALJ did not accept claimant's testimony, she concluded that claimant was not available for work during the weeks at issue since her schooling imposed a condition that unreasonably limited her opportunities to return to work at the earliest possible time. We disagree.

In this case, the principal issue is whether, as claimant testified, she was actually willing to forgo school in favor of suitable work. Nothing in this record calls into question claimant's credibility, or conspicuously undercuts the force of her testimony. With respect to claimant's response to the Department's online questionnaire that appeared to conflict with her hearing testimony, it is quite plausible that, as she testified, she made accidentally entered incorrect information into the Department's questionnaire about her willingness to work despite her school attendance. Audio at ~ 11:34. Claimant's testimony at hearing – that she would drop school if offered a job that conflicted with her classes-- was consistent with her statement to the Department's adjudicator during the Department's investigation. Audio at ~5:22. The Department's witness did not question or dispute claimant's testimony that she had dropped school twice before when her school schedule conflicted with her job schedule. Audio at ~12:30. The Department's witness did challenge claimant's testimony that during the weeks at issue she was applying for work that conflicted with her school schedule. Audio at ~12:21. That claimant was apparently willing in the past to forfeit the money that she had invested in school in order to obtain or maintain a job, gives credence to her testimony at hearing that she was willing to do so with respect to fall term 2014 if the schedule for a job that she was offered could not be reconciled her class schedule. Given these counter-veiling considerations, we cannot conclude that claimant lied about her willingness to drop school if she needed to do so in order to secure work. For this reason, there was insufficient reliable evidence in the record to support the ALJ's conclusion that claimant was not available for work during the weeks at issue based on her school attendance.

Hearing Decision 15-UI-33340 is reversed. Claimant was available for work during the weeks of November 9, 2014 through November 29, 2014 (weeks 46-14 through 48-14). Claimant was not ineligible to receive benefits during those weeks based on her school attendance.

DECISIONS: Hearing Decision 15-UI-33339 is affirmed.
Hearing Decision 15-UI-33340 is reversed, as set out above

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

DATE of Service: April 20, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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