

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0166

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On January 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 105959) concluding claimant was not available for work during the week of December 14, 2014 through December 20, 2014 (week 51-14). Claimant filed a timely request for hearing. On February 26, 2015, ALJ Shoemake conducted a hearing, and on February 27, 2015 issued Hearing Decision 15-UI-34263, affirming the Department's decision. On March 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 22, 2014, claimant filed an initial claim for benefits. Claimant's claim was valid. Claimant claimed benefits for the week of December 14, 2014 through December 20, 2014 (week 51-14), the week at issue.

(2) During the week at issue, UPS employed claimant as an on-call driver's assistant. Claimant's labor market was Eugene and Springfield, Oregon and the surrounding areas.

(3) On December 16, 2014, at 8:30 a.m., UPS contacted claimant for suitable and available work as a driver's assistant that day, to begin at 9:30 a.m. Claimant told the employer he could not accept the work because he was in Portland with a friend, did not have his own transportation, and would not be able to return to the Eugene/Springfield area in time to work for the employer as a driver's assistant that day.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the week of December 14, 2014 through December 20, 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 during all of the usual hours and days customary for the work being sought, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. OAR 471-030-0036(3)(d) provides that a claimant may be considered available for work even if absent from his labor market under limited circumstances, but that provision only applies if no opportunity to work was missed because of the absence. The determination of an individual's availability for work is done on a week-by-week basis; if an individual is not available for work on a particular day, he is considered to be not available for work for the entirety of that week. *See accord* ORS 657.155(1)(c); OAR 471-030-0036(3).

Claimant did not dispute the testimony of the Department's authorized representative that he missed an opportunity to work for the employer on December 16, 2015. Claimant admitted he was out of his labor market for one day, with a friend looking for a place to live in Portland, and that he missed an opportunity to work because of his absence from his labor market. Regardless how briefly claimant was away from his labor market, because his absence caused him to miss an opportunity to work, he cannot be considered "available for work" during the week in which the missed work opportunity occurred.

Claimant was not available for work during the week of December 14, 2014 through December 20, 2014 (week 51-14). Claimant is ineligible to receive benefits during that week.

**DECISION:** Hearing Decision 15-UI-34263 is affirmed.

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

**DATE of Service:** March 11, 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](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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