

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0226

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the week of December 7, 2015 through December 13, 2015 (decision # 112716). Claimant filed a timely request for hearing. On February 12, 2015, ALJ M. Davis conducted a hearing at which the employer did not appear, and on February 13, 2015 issued Hearing Decision 15-UI-33511, affirming the Department's decision. On February 26, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he stated that he asked the ALJ to keep the hearing record open to allow him to submit a written statement from a witness who was not available to testify at the hearing and she did not. We interpret claimant's statement as asserting that the ALJ's decision should be reversed for this reason. The substance of the witness's expected testimony, as described by claimant, was that the employer had not posted a notice that would have alerted him in advance that he was scheduled to work on December 13, 2014. Audio at ~14:40. However, the ALJ's decision accepted claimant's testimony that he was unaware before the employer called him at 8:00 a.m. on December 13, 2014 that it had scheduled him to work, and it is not at all clear what additional evidence the witness might present about claimant's availability to work on that day. Because claimant did not show that the testimony of this witness was relevant to any facts that were not found in claimant's favor after the hearing, the ALJ did not err in not allowing claimant an opportunity to submit a statement from the witness. EAB otherwise considered claimant's written argument when reaching this decision.

FINDING OF FACT: (1) Snyder Roofing of Oregon, LLC employed claimant as a journeyman roofer, driver and operator from approximately 1993 and through at least December 13, 2014.

(2) On November 3, 2014, claimant filed an initial claim for unemployment benefits. Claimant's claim was valid. Claimant claimed and was paid benefits during the week of December 7, 2014 through December 13, 2014 (week 50-14), the week at issue.

(3) Sometime before December 13, 2014, the employer scheduled claimant for work on December 13, 2014. Claimant was unaware of this scheduling and made an appointment to meet with his banker on December 13, 2014 to discuss his finances.

(4) On December 13, 2014 at approximately 8:00 a.m., a representative of the employer called claimant at his home to ask the reason that he had not reported for work. After some discussion, the representative told claimant that the employer would cover claimant's absence. If the employer had asked claimant to report for work on December 13, 2014, claimant would have refused because he had made plans to meet with his banker on that day, relying on the fact that he was not aware that he was scheduled to work. Audio at ~13:32, ~13:57, ~14:27.

CONCLUSIONS AND REASONS: Claimant was not available to work during the week of December 7, 2014 through December 13, 2014 (week 50-14).

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 all full time, part time and temporary work opportunities throughout the labor market during all of the days and times 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. *Id.*

In this case, we infer that hours that the employer thought it had scheduled claimant to work on December 13, 2014 were among the days and hours that were customary for claimant's work as a roofer, driver and operator. Although the employer did not insist that claimant report for work on December 13, 2014 after its representative called him that morning, claimant unequivocally testified that he would not have reported if it had because he had made plans to meet with his banker and he "wasn't going to break them." Audio at ~13:32. Since claimant stated that if he worked on December 13, 2014 he would not have been able to keep his appointment with his banker, we also infer that the appointment time fell within the customary times for claimant's work. Because claimant was unwilling to report on short notice for available work as a result of his previously made plans, even if he made those plans relying on a belief that he was not going to be called to work that day, his testimony established that he was not willing to report for work during all of the usual hours and days customary for the work that he was seeking. As a result, claimant's own testimony demonstrated that he was not available for work during the week of December 7, 2014 through December 13, 2014 since he was unwilling to forgo the planned appointment with his banker in favor of work.

Claimant was not available to work during all of the days and hours customary for the work he was seeking during the week of December 7, 2014 through December 13, 2014 (week 50-14). Claimant is not eligible to receive benefits during that week.

DECISION: Hearing Decision 15-UI-33511 is affirmed.

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

DATE of Service: April 15, 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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