

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0332

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work, available for work or actively seeking work from November 2, 2014 through January 17, 2015 (Decision # 94910). On March 2, 2015, ALJ Murdock conducted a hearing, and on March 5, 2015, issued Hearing Decision 15-UI-34584, concluding claimant was not able to work, available for work or actively seeking work from November 2, 2014 through February 21, 2015. On March 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Wells Fargo Bank employed claimant as a loan specialist beginning in 2010. From 2010 to May 2014, claimant worked at the employer's Beaverton office five minutes from his residence. Claimant's five year-old son suffered from severe autism and it was difficult for anyone other than claimant to control him. The employer allowed claimant to flex his work schedule to accommodate his child care needs. However in May 2014, the employer transferred claimant's department to its Vancouver, WA office. Claimant worked in Vancouver to preserve his job but the distance between work and home made it difficult for him to care for his child and resulted in claimant developing depression. In July 2014, claimant went on a leave of absence from work based both on his family needs and mental health difficulties. Prior to November 17, 2014, claimant was not released by his physician to return to work.

(2) Claimant filed an initial claim for benefits on November 17, 2014. Claimant claimed and was denied benefits for the weeks including November 2, 2014 through February 21, 2015 (weeks 45-14 through 07-15), the weeks at issue.

(3) Claimant's labor market area was the Hillsboro, Portland and Vancouver, WA area. During the weeks including November 2, 2014 through January 24, 2015 (weeks 45-14 through 03-15), claimant did not seek any work. On January 16, 2015, claimant's physician released him to return to work, but recommended that he not work in Vancouver, WA because working there originally contributed to his

depression. During the weeks including January 24 through February 21, 2015 (weeks 04-15 through 07-15), claimant conducted an active search for work as an office worker but was not willing to accept work in Vancouver, WA.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not actively seek work and was not available for work during the weeks at issue.

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). To be considered to be actively seeking work, an individual must perform work search activities consistent with those of an ordinary and reasonable individual seeking to return to work at the earliest opportunity. OAR 471-030-0036(5)(a). To be considered to be available for work, an individual must be willing and capable of reporting for any suitable work opportunities within the individual's labor market. OAR 471-030-0036(3).

In this case, claimant did not dispute that he did not seek any work opportunities during the weeks including November 2, 2014 through January 24, 2015 (weeks 45-14 through 03-15). By failing to seek any work, claimant's actions were inconsistent with those of an ordinary and reasonable individual seeking to return to work at the earliest opportunity and he did not meet the eligibility requirement that he actively seek work during those weeks. Claimant also admitted that he was unwilling to accept work in Vancouver, WA during any week based on his physician's recommendation. By being unwilling to accept or report for suitable work opportunities in that portion of his labor market, claimant did not meet the eligibility requirement that he be available for any suitable work.

Claimant did not actively seek work and was not available for work during the weeks at issue. Accordingly, he is not eligible for benefits for the weeks including November 2, 2014 through February 21, 2015 (weeks 45-14 through 07-15).

DECISION: Hearing Decision 15-UI-34584 is affirmed.

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

DATE of Service: May 14, 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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