

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0385

Affirmed
Eligible In Part; Ineligible In Part

PROCEDURAL HISTORY: On March 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of February 15, 2015 through February 28, 2015 (decision # 143529). Claimant filed a timely request for hearing. On March 26, 2015, ALJ Triana conducted a hearing, and on March 30, 2015 issued Hearing Decision 15-UI-35946, concluding claimant was not available for work during the weeks of February 21, 2015 through March 7, 2015 and was available for work during the weeks of March 8, 2015 through March 21, 2015. On, April 3, 2015, 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) In approximately late November 2014, claimant's wife gave birth to a child. Sometime before February 2015, claimant's wife returned to full-time work, and she worked day shifts on Mondays through Fridays. When claimant's wife returned to work, claimant had two part-time jobs with two different employers. Claimant and his wife paid between \$750 and \$800 per month for childcare for their baby at times when both of them were working. Sometime before approximately January 2015, claimant was laid off from one of those jobs.

(2) On January 28, 2015, claimant left his second part-time job. Hearing Decision 15-UI-35944. Claimant quit the second job because he concluded that his net weekly pay from that job did not cover his share of the family's living expenses, including daycare for his daughter and health insurance. If claimant was not employed, he would incur no childcare costs because he would be available to provide all care for the baby. If claimant was not employed, he would also become eligible to receive health insurance through the Oregon Health Plan at no out-of-pocket cost.

(3) On February 2, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed, but was not paid benefits during the weeks of February 15, 2015 through March 21, 2015

(weeks 07-15 through 11-15), the weeks at issue¹. Claimant sought work during the weeks at issue as a retail manager, in merchandise stocking and in loan processing.

(4) During weeks 07-15 through 09-15, claimant was not willing to accept any part-time jobs. Audio at ~21:42. Claimant was unwilling because he thought that he would not have health insurance benefits through a part-time job, and that his out-of-pocket costs for childcare and health insurance would equal or exceed his take home pay. Claimant was willing to accept full-time work during this period because he thought that health insurance benefits would likely attach to a full-time job and the pay he received would cover childcare costs.

(5) Shortly after March 4, 2015, during week 09-15, claimant received administrative decision # 143529. Claimant reviewed the decision and realized he was being denied benefits because he was willing only to accept full-time work, and not temporary or part-time work. At that time, claimant decided that he would look for and accept part-time and temporary work in addition to full-time work so that he would become eligible to receive unemployment insurance benefits. Also at approximately this time, claimant contacted his mother to provide childcare for his and his wife's baby. Claimant's mother told him she would quit her own job and provide care for the baby for \$75 per week after she received a spousal support settlement from a pending dissolution case. Claimant's mother told him that she expected to receive the settlement very soon. Audio at ~23:46. Claimant's mother received this settlement on approximately March 20, 2015, during week 11-15. Audio at ~27:20.

(6) During weeks 10-15 and 11-15, claimant looked for temporary and part-time jobs as well as full-time jobs, and was willing to report to any of those jobs. If a job was temporary or part-time, claimant intended either to arrange for his wife to take time off from her job to care for their baby or to pay his previous babysitter to do so until his mother received the dissolution settlement and became available to provide low cost care for the baby during his work hours. If a job that was offered to claimant did not have health insurance benefits but paid an amount that disqualified claimant from OHP benefits, claimant intended to accept the job and become uninsured until he had obtained a second job and had sufficient total income to afford private health insurance.

CONCLUSIONS AND REASONS: Claimant was not available and was not eligible to receive unemployment insurance benefits during the weeks of February 15, 2015 through March 7, 2015. Claimant was available for work during the weeks of March 8, 2015 through March 21, 2015 and was eligible to receive benefits during those weeks.

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 hours customary for the work the individual is seeking, and

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at EAB.

refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

With respect to weeks 07-15 through 09-15, claimant conceded that he was willing to accept only full-time work and not temporary or part-time work. Audio at ~21:42, ~21:48, ~24:08. During those weeks, by limiting the jobs he was willing to accept to full-time jobs only, and excluding temporary and part-time jobs, claimant imposed a condition that unreasonably interfered with his opportunities to return to work at the earliest possible time. Based on this testimony, claimant was not available for work during weeks 07-15 through 09-15.

With respect to weeks 10-15 through 11-15, claimant's testimony that he would look for and accept part-time and temporary work as well as full-time work appeared sincere. Audio at ~21:56, ~31:30. . Claimant did not attempt to hide the initial limitation he had imposed even though he knew that his admission would render him ineligible to receive benefits during those early weeks. Claimant's rationale for expanding the types of job he was willing to search for and accept beginning in week 10-15, that he needed unemployment insurance benefits to enable him to meet his living expenses, seemed genuine and straightforward. Audio at ~36:21. Overall, claimant's testimony about his intentions was credible. In addition, claimant took the necessary steps to allow him to accept part-time or temporary work, if such jobs were offered to him beginning in week 10-15 by obtaining the agreement of his mother to care for the baby after she received her settlement, planning to have his wife take some time off from work to provide that care temporarily until his mother received the settlement, or using the services of his prior babysitter for this interim period. Audio at ~23:46, ~26:43, ~28:15. The evidence that claimant presented about his mother's agreement was not disputed at hearing, nor was the fact that the settlement that would enable her to provide babysitting for his baby was imminent and actually occurred during week 11-15. On this record, it appears more likely than not, that during weeks 10-15 through 11-15, claimant was willing to accept and report to temporary and part-time work opportunities as well as full-time opportunities, as evidenced not only by his statements of intention made at the hearing but also by the arrangements he had made to provide affordable babysitting for his daughter and his willingness to give up health insurance coverage.

Claimant was not available for work during the weeks of February 15, 2015 through March 7, 2015, and was not eligible to receive benefits during those weeks. Claimant was available for work during the weeks of March 8, 2015 through March 21, 2015.

DECISION: Hearing Decision 15-UI-35946 is affirmed.

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

DATE of Service: May 21, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.