

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0398

Reversed

Ineligible December 21, 2014 to January 3, 2015 (weeks 52-14 and 53-14)

PROCEDURAL HISTORY: On January 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was able to work and available for work from December 21, 2014 to January 3, 2015 (weeks 52-14 and 53-14) (decision # 122546). The employer filed a timely request for hearing. On March 12, 2015, ALJ Vincent conducted a hearing, and on March 19, 2015 issued Hearing Decision 15-UI-35441, affirming the Department's decision, but concluding claimant was eligible for unemployment benefits from March 1, 2014 through March 7, 2014. On April 8, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006). The employer failed to certify that it provided a copy of its written argument to claimant as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits on February 23, 2014. On November 3, 2014, claimant began working for the employer in Eugene, Oregon as a customer service agent.

(2) From December 8, 2014 through January 3, 2015, claimant was unable to work because she had viral meningitis. Claimant moved to Albany, Oregon after she became sick.

(3) Claimant claimed and was paid benefits for the weeks from December 21, 2014 through January 3, 2015 (weeks 52-14 through 53-14), the weeks at issue. Claimant's labor market during the weeks at issue was Albany, Corvallis, Lebanon, and the surrounding areas. Her labor market did not include Eugene, Oregon.

(4) Claimant's doctor told her she could return to work doing the work she sought when the symptoms of her illness subsided. Claimant felt able to work on January 3, 2015, but did not return to work for the employer because she did not have transportation from Albany to Eugene, Oregon. Claimant was able to use public transportation to seek and attend work within her labor market.

(5) During the weeks at issue, claimant sought work as a call center representative, sterile processing technician, or customer service representative.

CONCLUSIONS AND REASONS: We conclude claimant was available to work, but unable to work, during weeks 52-14 and 53-14.

In Hearing Decision 15-UI-35441, the ALJ found the only week at issue was week 9-15, which is March 1, 2015 to March 7, 2015. He then concluded that claimant was able and available to work during March 1, 2014 to March 7, 2014.¹ However, the ALJ did not have jurisdiction to reach a determination about claimant's ability or availability during week 9-15. Because decision # 122546 was confined to the period of December 21, 2014 through January 3, 2015 (weeks 52-14 and 53-14), that is the only period that may be addressed on appeal of that decision. The ALJ reached a decision about the week of March 1, 2015 to March 7, 2015 in error; claimant should not be allowed or denied benefits for that week on the basis of this or the ALJ's decision.

To be eligible to receive benefits, unemployed individuals must be able to work and available for work during each week claimed. ORS 657.155(1)(c). An individual is considered able to work for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (February 23, 2014). Claimant testified at hearing that she was not physically able to return to work until January 3, 2015. Audio Record at 13:16-13:33. Because claimant was not physically capable of performing the work she was seeking from December 21, 2014 to January 2, 2015, claimant was not able to work for purposes of ORS 657.155(1)(c), and is ineligible for benefits for weeks 52-14 and 53-14.

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). Among those requirements are that the individual be willing to work during all of the usual hours and days of the week customary for the work being sought, and capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, and not imposing conditions that substantially reduce the individual's opportunities to return to work at the earliest possible time. *Id.*

Claimant was not capable of reporting to work for the employer after she moved to Albany, Oregon, due to lack of transportation from Albany to the employer's location in Eugene. However, claimants are only required to be available for "suitable" work, and factors governing whether work may be considered "suitable" include the "the distance of the available work from the residence of the individual." ORS 657.190. Eugene is sufficiently distant from Albany that it was not in claimant's labor market area during the weeks at issue. Thus, claimant's inability to travel to Eugene from Albany did not render her unavailable for work during those weeks.

¹ The ALJ's reference to 2014 appears to be a scrivener's error.

In sum, claimant was available for work during weeks 52-14 and 53-14, but is ineligible to receive benefits for weeks 52-14 and 53-14 because she was not able to work during those weeks. On this record, claimant was able to work and available for work thereafter based on her health and access to transportation in her labor market, and benefits would be payable, unless claimant has otherwise been deemed ineligible or disqualified for benefits for other reasons during subsequent weeks.

DECISION: Hearing Decision 15-UI-35441 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: June 2, 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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