

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0415

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 71418) concluding claimant was not available for work for the period of December 28, 2014 through January 3, 2015 (week 53-14). Claimant filed a timely request for hearing. On February 25, 2015, ALJ Wipperman conducted a hearing, and on February 27, 2015 issued Hearing Decision 15-UI-34260, affirming the Department's decision. On March 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. Claimant argued that his incarceration occurred "outside work hour" and that "by union contract both days (December 31, 2014 and January 1, 2015) are traditional (sic) off". The Department witness testified in the hearing that construction work is customarily performed on weekdays during the day shift. Claimant was incarcerated from 10 p.m. Wednesday, December 31, 2014 until approximately 10:45 a.m. on Thursday, January 1, 2015. We agree with the ALJ that "under OAR 471-030-0036(3)(f)(B), an individual cannot be considered available for work if he is incarcerated during *any* of the customary days or hours of his work." Emphasis in original. Hearing Decision 15-UI-34260 at page 2. We also agree with the ALJ that the Department's rule does not explicitly or implicitly include holidays as an exception to its "customary days and hours" language that would permit claimant's interpretation of its incarceration rule.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-34260 is affirmed.

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

DATE of Service: April 17, 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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