

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0468

Modified
Ineligible Weeks 02-15 Through 11-15

PROCEDURAL HISTORY: On March 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 90826) concluding that claimant was not available for work from January 4 through February 21, 2015 (weeks 01-15 through 07-15). Claimant filed a timely request for hearing. On April 6, 2015, ALJ Murdock conducted a hearing, and on April 10, 2015, issued Hearing Decision 15-UI-37781, concluding that claimant was not available for work from January 11 through March 21, 2015 (weeks 02-15 through 11-15), but was available for work from January 4 through 10, 2015 (week 01-15) and March 22 through 28, 2015 (week 12-15). On April 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) In fall 2014, claimant enrolled as a student in the criminology program at Portland State University (PSU). Claimant expects to receive her B.S. degree in June 2016.

(2) Claimant enrolled in classes at PSU for the winter term that began on January 5, 2015 and ended on March 20, 2015. During this term, claimant attended class on Tuesday and Thursday, from 12:00 to 3:50 p.m. and on Wednesday, from 5:30 to 9:10 p.m. Claimant received \$2,513 in financial aid to cover the cost of tuition, books and fees for the winter term. If claimant did not complete her classes during the winter term, she was required to pay back her financial aid.

(3) Claimant claimed unemployment benefits for the period January 4 through March 28, 2014 (weeks 01-15 through 12-15).

(4) During the weeks at issue, claimant sought work as a corrections or security officer, in-home caregiver, and cashier. Work as a corrections or security officer and in-home caregiver is performed all shifts, all days. Work as a cashier is performed day and evening shifts, all days.

(5) Sometime during the weeks at issue, claimant submitted a completed student eligibility questionnaire to the Department in which she responded that, if offered work that conflicted with her classes, she would see if the employer could accommodate her school schedule. Audio at 7:01.

Claimant also stated on the questionnaire that she was willing to work day and swing shifts on Monday, Wednesday and Friday as a criminal justice corrections officer or residential counselor, and day shift on Monday, Wednesday and Friday as an in-home health care provider. Audio at 39:11.

(6) On March 4, 2015, a Department representative spoke with claimant and asked her what she would do if offered work that conflicted with her school schedule. Claimant responded that she would talk to the supervisor offering the job, and see if the supervisor could work with her schedule. When asked what she would do if offered full time work, claimant responded that she would check on the possibility of online classes, but admitted that none of the classes she was taking during winter term were offered online. When asked if she would drop school to accept a job, claimant responded that was a hard question, and she did not know what she would do, but to “tell them yes for this.” Audio 7:19 through 8:37.

(7) When claimant applied for jobs during the weeks at issue, she told prospective employers she was attending school and also told them her class schedule.

(8) From March 20 through March 28, 2015, claimant was on spring break and had no classes.

CONCLUSION AND REASONS: Claimant was not available for work from January 4 through March 20, 2015 (weeks 02-15 through 11-15) and is not eligible to receive benefits for those weeks. Claimant was available for work from March 22 through March 28, 2015 (week 12-15) and is eligible to receive benefits for this week.

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 full time, part time and temporary work opportunities throughout the labor market during all of the hours and days customary for the type of work sought, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.*

Although claimant asserted at the hearing that she would have quit school if offered work during the weeks at issue that conflicted with her class schedule, other statements she made demonstrate that she was unwilling to drop her classes to accept a job. Her responses on the student eligibility questionnaire indicate that she mainly sought work during days and hours that did not conflict with her classes. When she spoke to a Department representative on March 4, 2015, claimant explained that if offered a job that conflicted with her classes, she would ask if the employer could accommodate her schedule. In addition, she did not unequivocally tell the representative that she was willing to drop her classes for a job. At the hearing, claimant testified that she advised potential employers of her class schedule when she applied for work during the weeks at issue. Based on these statements, we conclude it more likely than not that claimant was unwilling to accept jobs that conflicted with her school schedule during the weeks she was attending classes at PSU, from January 4 through March 20, 2015. Because claimant was unwilling to accept all work opportunities during all of the hours and days customary for the type of work sought, claimant was not available for work during the weeks at issue, weeks 01-15 through 11-15 (January 4 through March 20, 2015).

We agree with the ALJ's conclusion that claimant was available for work during the week of spring break, March 22 through 28, 2015 (week 12-15). During that week, claimant had no classes and was willing and able to work all days and all hours customary for the jobs for which she was applying. We disagree, however, with the ALJ's conclusion that claimant was available for work from January 4 through 10, 2015 (week 01-15). The ALJ found that claimant was available for work during this week because the ALJ was persuaded that claimant "could have made changes to her classes or drop out of them in the first week of the term (week 01-15) without suffering financial loss." Hearing Decision 15-UI-36681. Claimant may have been able to drop her classes during the first week of the winter term without having to pay back her financial aid. As discussed above, however, we conclude that claimant was unwilling to quit school if she was offered work that conflicted with her class schedule. As a result, claimant was not available for work during week 01-15.

Claimant was not available for work from January 4 through March 20, 2015 (weeks 01-15 through 11-15) and is ineligible to receive unemployment benefits for those weeks. Claimant was available for work from March 22 through March 28, 2015 and is eligible to receive unemployment benefits for that week.

DECISION: Hearing Decision 15-UI-36681 is modified, as outlined above.

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

DATE of Service: June 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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