

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0539**

*Modified*  
*Ineligible*

**PROCEDURAL HISTORY:** On March 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work (decision # 110237). Claimant filed a timely request for hearing. On April 24, 2015, ALJ R. Davis conducted a hearing, and on May 1, 2015 issued Hearing Decision 15-UI-37804, affirming the Department's decision. On May 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument and the entire hearing record. In his written argument, claimant asked for a new hearing to have the opportunity to present new information he did not receive before the hearing. Claimant's request for relief is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information only if the party offering the information shows that the new information is relevant and material to EAB's determination, and that factors or circumstances beyond his reasonable control prevented him from offering the information into evidence at the hearing. Because claimant did not identify or describe the new information, he failed to establish that it is relevant and material to EAB's determination. For this reason, claimant's request to reopen is denied. EAB considered only information received into evidence at the hearing.

**FINDINGS OF FACT:** (1) Claimant claimed unemployment insurance benefits for the weeks from November 2, 2014 through March 7, 2015 (weeks 45-14 through 09-15), the weeks at issue. The Department initially paid claimant benefits for weeks 45-14 through 7-15, and denied claimant benefits for weeks 08-15 and 09-15.<sup>1</sup>

<sup>1</sup> We take notice of this fact, which is contained in Employment Department records. Any party objecting to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, 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.

(2) Claimant was last employed as a rifleman and an enlisted quarters manager for the United States Marine Corps. Exhibit 1. Claimant's also had work experience working in a non-managerial capacity in retail and at a movie theater.

(3) During the weeks at issue, claimant registered for job referrals through iMatchSkills as an aircraft mechanic and service technician or mechanic. Claimant has no education or experience that qualifies him to work performing those jobs. Claimant also sought referrals to work as a military enlisted tactical operations and weapons specialist or crew member. Exhibit 2.

(4) During all the weeks at issue, claimant sought primarily work that he was not qualified to perform because the work required professional or other advanced degrees, licenses, certificates, and experience that claimant did not possess.

(5) During the weeks at issue, claimant sought management positions in sales, human resources, and high-level management. Claimant had no experience performing those types of management positions.

**CONCLUSIONS AND REASONS:** Claimant was not available for work from November 2, 2014 through March 7, 2015 (weeks 45-14 through 09-15).

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seeking 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, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* The Department has the burden of proof with respect to any weeks in which the Department initially paid, and now seeks to retroactively deny, benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). By extension of that principle, claimant has the burden of proof with respect to weeks the Department withheld benefits. Therefore, in this case, the Department has the burden with respect to weeks 45-14 through 7-15, and claimant has the burden with respect to week 8-15 and 9-15.

The Department met its burden to prove that claimant was not available for work during weeks 45-14 through 7-15, and claimant failed to show that he was available for work during weeks 8-15 and 9-15. Claimant had experience performing entry-level positions in retail and at a theater, and as a rifleman and enlisted quarters manager. However, the record shows claimant's direct contacts with employers were all for work that required high-level management experience, advanced degrees, licenses, certificates, and other employment experience that claimant did not possess. Claimant asserted at hearing that, although he applied for jobs he was not qualified to perform, he understood that, as a veteran, the employers to which he applied would consider him for any available job. Audio Record at 16:42-17:26. However, the record does not show the employers were actively hiring for any other positions at the time claimant applied for work. Thus, by applying only for work he was not qualified to perform, claimant imposed a condition which substantially reduced his chances to return to work at the earliest opportunity. Accordingly, he did not meet the requirements of OAR 471-030-0036(3)(c).

In sum, claimant was not available for work during weeks 45-14 through 9-15. Therefore, he is not eligible to receive unemployment insurance benefits for those weeks.

**DECISION:** Hearing Decision 15-UI-37804 is modified as outlined above.<sup>2</sup>

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

**DATE of Service: July 1, 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](http://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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<sup>2</sup> Hearing Decision 15-UI-37804 contained clerical errors that made the ALJ’s conclusion unclear.