

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1184**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On August 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 3 through August 8, 2015 (decision # 155620). Claimant filed a timely request for hearing. On September 24, 2015, ALJ Wyatt conducted a hearing, and on September 28, 2015 issued Hearing Decision 15-UI-44966, concluding that claimant was not available for work from May 3 through September 19, 2015. On October 5, 2015, claimant 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.

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the weeks from May 3 through September 19, 2015 (weeks 18-15 through 37-15), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a cashier, stock clerk, and in retail sales. In claimant's labor market, Lebanon, Albany and Sweet Home, Oregon, the usual hours and days customary for those types of work were between 8:00 a.m. to 10:00 p.m., all days of the week.

(3) During the weeks at issue, claimant was unable to drive a vehicle due to a medical condition that had caused her to experience a seizure. Albany and Sweet home were not within walking distance from claimant's home in Lebanon. The only public transportation available was an on-call bus service, which required 24 hours advance notice, could not guarantee service, and only was available until 6:00 p.m. Claimant's daughter was willing to drive claimant to and from work when available, but often was not available because she worked 12 to 24 hour shifts, and had 2 children to care for.

(4) Claimant also had a friend who said she would drive claimant to and from work "if she was available." Transcript at 23. However the friend had serious health issues that limited her availability to drive claimant. In August 2015, claimant's friend's was no longer able to drive claimant at all. In mid-

September 2015, claimant's friend died. No one else was available to drive claimant to or from work during the weeks at issue.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was not available for work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must be available for work. 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 capable of accepting and reporting for any suitable work opportunities within the individual's labor market. *Id.*

To be considered available for work during the weeks at issue, claimant was required to be capable of reporting for any suitable work opportunities within her labor market, including Albany and Sweet Home. Albany and Sweet Home were not within walking distance of claimant's home in Lebanon. Claimant therefore was required to have reliable transportation to and from Albany and Sweet Home on weekdays from approximately 8:00 a.m. to 10:00 p.m. At hearing, claimant admitted that the only public transportation available was an on-call bus service, which required 24 hours advance notice, could not guarantee service, and only was available until 6:00 p.m. Transcript at 21-22. Claimant also admitted that her daughter was available to driver her to and from work only on "occasion" because she worked 12 to 24 hour shifts and had 2 children to care for. Transcript at 28-29. Claimant testified that a friend said she was willing to drive claimant to and from work. Transcript at 22. However, when the ALJ asked claimant if her friend said she could drive claimant on a daily basis, claimant admitted that her friend said only she could drive claimant "if she was available." Transcript at 23. Claimant further admitted that her friend's availability was limited due to serious health issues, which worsened in August 2015, and led to her death in mid-September 2015.

In sum, the record shows that during the weeks at issue, claimant lacked reliable transportation to and from Albany and Sweet Home on weekdays from approximately 8:00 a.m. to 10:00 pm. The record therefore shows that claimant was not capable of reporting for all suitable work opportunities within her labor market. Claimant therefore was not available for work during the weeks at issue, and is ineligible for benefits for those weeks.

**DECISION:** Hearing Decision 15-UI-44966 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: October 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](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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