

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1350

Affirmed
Ineligible

PROCEDURAL HISTORY: On July 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from December 21, 2014 through July 4, 2015 (decision # 151200). Claimant filed a timely request for hearing. On August 20, 2015, ALJ Vincent conducted a hearing at which the Department failed to appear, and on August 28, 2015 issued Hearing Decision 15-UI-43653, affirming the Department's decision. On September 11, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On October 1, 2015, EAB issued Employment Appeals Board Decision 2015-EAB-1080, reversing Hearing Decision 15-UI-43653, and remanding this matter to the Office of Administrative Hearings (OAH) for additional proceedings. On October 22, 2015, ALJ Vincent conducted another hearing, and on October 30, 2015 issued Hearing Decision 15-UI-46903, again affirming decision # 151200. On November 14, 2015, claimant filed an application for review of Hearing Decision 15-UI-46903 with EAB.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from December 21, 2014 through July 4, 2015 (weeks 52-14 through 26-15), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a caregiver. In claimant's labor market, the usual hours and days of the week customary for caregiver work included all shifts, all days of the week.

(3) During the weeks at issue, claimant worked for the employer, Visiting Angels. When hired in August 2014, claimant informed the employer that she did not want to work more than 20 hours per week.

(4) In late December 2014, the employer offered claimant work on a Friday. On December 29, 2014, claimant replied, "Oh Fridays are no good. My current availability is Tuesday, Thursday, Saturday and Sunday." Transcript at 5. The employer had work available all days of the week.

(5) On January 8, 2015, the employer offered claimant work on Saturday, January 10, 2015. Claimant replied, "Saturday is one of my days of availability," but "I believe I have already hit my 20 hours for this week." Transcript at 7.

(6) On January 15, 2015, the employer offered claimant work on Friday, January 16, 2015. Claimant replied, "Friday should be one of my blocked days," and offered to work on Saturday. Transcript at 8.

(7) On March 29, 2015, the employer asked claimant to "update her availability." Transcript at 14. On March 31, 2015, claimant replied, "My availability is the same." Transcript at 14.

(8) Claimant never informed the employer that she wanted to work more than 20 hours per week, or on Mondays, Wednesdays and Fridays.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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 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 full time during all of the usual hours and days of the week customary for the work being sought, and not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time. *Id.*

At hearing, claimant argued that during the weeks at issue, she was not unwilling to work more than 20 hours per week, or on Mondays, Wednesdays and Fridays, as evidenced by the fact that she occasionally did so. Transcript at 25-27. However, claimant repeatedly made clear to the employer that she typically did not want to work more than 20 hours per week, or on Mondays, Wednesdays and Fridays, and never informed the employer that those preferences had changed. She thereby imposed a condition which substantially reduced her opportunities to work during the weeks at issue. Claimant therefore was not available for work, and is ineligible for benefits, for those weeks.

DECISION: Hearing Decision 15-UI-46903 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: December 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. 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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