

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1485

Modified
Ineligible

PROCEDURAL HISTORY: On October 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work for the weeks including April 5 through May 16 and May 24 through June 6, 2015 (weeks 14-15 through 19-15 and 21-15 through 22-15) (decision # 140314). Claimant filed a timely request for hearing. On November 13, 2015, ALJ S. Lee conducted a hearing, and on November 20, 2015, issued Hearing Decision 15-UI-48076, concluding claimant was not available for work for the weeks including April 5 through April 11 and April 19 through June 6, 2015 (weeks 14-15 and 16-15 through 22-15). On May 21, 2013, claimant filed an application for review of Hearing Decision 15-UI-48076 with the Employment Appeals Board (EAB).¹

EAB considered the entire hearing record and claimant's written argument to the extent it was based on the record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) On January 15, 2015, claimant filed an initial claim for unemployment insurance benefits and the Department determined that her weekly benefit amount was \$164. Claimant claimed and was paid her weekly benefit amount for the weeks including April 5 through May 16 and May 24 through June 6, 2015 (weeks 14-15 through 19-15 and 21-15 through 22-15), the weeks at issue.

(2) From March 31 to June 4, 2015, claimant was employed by the Canby Unified School District as an on-call substitute instructional assistant and sought work there and through Work Source Oregon leads as a teacher, instructor, educational assistant, health care support worker and medical secretary during the weeks at issue. Claimant's labor market included the downtown Portland, Tualatin, Wilsonville and

¹ Claimant's application for review was filed one day late because a health condition prevented her from filing on time. We conclude claimant's health condition was a factor or circumstance beyond her reasonable control, and, thus, that claimant had good cause for filing a late application for review under ORS 657.875 and OAR 471-041-0070. Claimant's application for review is, therefore, allowed.

Oregon City areas. In claimant's labor market, the customary days and hours for the types of work claimant sought were Monday to Friday, 8:00 a.m. to 6:00 p.m.

(3) The employer used the AESOP telephonic scheduling system to contact substitute personnel and offer them work assignments. The system gave substitute workers several options in responding to calls including using phone keys to accept an assignment, reject an assignment or listen to another potential assignment. Just prior to the weeks at issue, claimant worked approximately three days per week for approximately five hours per day at \$9.95 per hour and concluded she could not support her household on the hours she was working for the employer. She determined to use the job seeking courses, tools and services offered by the Department's Work Source Oregon offices to locate and secure more lucrative employment.

(4) On April 8, 2015 (week 14-15), claimant rejected a same-day assignment from the employer for work as an educational assistant in a special education class because she planned to attend a workshop and skills lab at a Work Source Oregon office. On April 22, 2015 (week 16-15), claimant rejected a same-day assignment from the employer for work as an educational assistant in a special education class because she planned to prepare materials for a job fair at a Work Source Oregon office. On April 27, 2015 (week 17-15), claimant rejected a same-day assignment from the employer for work as an educational assistant in a special education class because she planned to attend a Work Source Oregon workshop and attend a job interview. On May 8, 2015 (week 18-15), claimant rejected a same-day assignment from the employer for work as an educational assistant at an elementary school because she planned to attend a job skills workshop at Pioneer Pacific College. On May 15, 2015 (week 19-15), claimant rejected a same-day assignment from the employer for work as an educational assistant at an elementary school because she had transportation problems and needed a vehicle oil change and checkup. On May 26, 2015 (week 21-15), claimant rejected a same-day assignment from the employer for work as an educational assistant at a high school because she planned to attend a job interview and submit a job application. On June 1, 2015 (week 22-15), claimant rejected a same-day assignment from the employer for work as an educational assistant at an elementary school because she did not feel well and planned to attend a doctor's appointment.

CONCLUSIONS AND REASONS: We agree with the ALJ in part. We agree claimant was not available for work for the weeks including April 5 through April 11, April 19 through May 16 and May 24 through June 6, 2015 (weeks 14-15, 16-15 through 19-15 and 21-15 through 22-15) and is ineligible for benefits for those weeks. We disagree that claimant is ineligible for benefits for the week including May 17 through May 23, 2015 (week 20-15) because claimant did not claim benefits for that week and that week was, therefore, not at issue.

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) (January 8, 2006). Among those requirements are that the individual be willing to work full time, part time and accept temporary work opportunities during all of the usual hours and days of the week customary for the work being sought, capable of reporting for any suitable work opportunities within their labor market and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. An individual is not available for work in any week claimed if the individual has an opportunity to perform suitable work during the week and

fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity. OAR 471-030-0036(3)(f).

Based on claimant's work history with the employer and the work she sought during the weeks at issue, the offered work that claimant rejected was suitable. Claimant admitted that she rejected the work assignments in question because she wanted to facilitate obtaining more lucrative employment, had transportation issues or was ill. Audio Record ~ 32:00 to 36:00; Exhibit 2. Although rejecting work for those reasons may have been reasonable, there is no "good cause" exception to the requirement that claimant remain available for work as a condition of receiving unemployment insurance benefits. Rather, the Department's rules, cited above, provide, in essence, that an individual who either limits her availability for work or misses opportunities for work, for almost any reason, including illness, will be considered unavailable for work. Accordingly, we agree with the ALJ that claimant is ineligible for benefits for the weeks including April 5 through April 11, April 19 through May 16 and May 24 through June 6, 2015 (weeks 14-15, 16-15 through 19-15 and 21-15 through 22-15).

However, we disagree with the ALJ that claimant is ineligible for benefits for the week including May 17 through May 23, 2015 (week 20-15) because there was no evidence that claimant claimed benefits for, or was unavailable for work, during that week.²

DECISION: Hearing Decision 15-UI-48076 is modified, as outlined above.

Susan Rossiter and J. S. Cromwell.

DATE of Service: January 15, 2016

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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² *See* decision # 140314, which excluded that week from the recitation of the weeks claimant claimed or was denied benefits based on claimant's availability.