

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1527

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 145741) concluding that claimant was not able to work from October 18 through November 7, 2015 (weeks 42-15 through 44-15). Claimant filed a timely request for hearing. On December 18, 2015, ALJ Shoemake conducted a hearing, and on December 22, 2015, issued Hearing Decision 15-UI-49817, concluding that claimant was unavailable for work from October 18 through December 12, 2015 (weeks 42-15 through 49-15). On December 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 4, 2015, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks 34-15 through 49-15 (August 23, through December 12, 2015). The Department did not pay claimant for any of the weeks at issue.¹

(2) During the weeks for which he claimed benefits, claimant sought work as a fabricator, welder and production worker. These types of work are performed all days, all shifts. Claimant's labor market is Eugene, Springfield, and Cottage Grove, Oregon.²

(3) On or about August 23, 2015, claimant quit his job with Personnel Source, a temporary employment agency, because he no longer had transportation available to get to his assignment at a cabinet shop in

¹ We take official notice of claimant's benefit payment history, contained in Department records. Any party that objects to our doing so must submit its objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such a timely written objection is received and sustained, the noticed facts will remain in the record.

² We take official notice that the distance between Cottage Grove and Eugene is 21.2 miles, and that the distance between Cottage Grove and Springfield is 19.1 miles. Any party that objects to our doing so must submit its objection to this office in writing, setting forth the basis of the objection, 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 part of the record in this case.

Eugene. Claimant lived with his parents in Cottage Grove, and his father had been driving him to work. Claimant was often assigned to work the day shift, which began at 6 a.m., and sometimes earlier. Claimant's father, who is 80 years old, became tired of getting up early in the morning and was no longer willing to drive claimant to work.

(4) Claimant has no car and no driver's license, and no means of transportation within his labor market other than the bus. Bus service is available from Cottage Grove to Eugene and Springfield, but is only provided from 7:00 a.m. to 7:45 p.m.

(5) On September 23, 2015, the Department issued an administrative decision (# 81307) concluding that claimant was not available for work from August 23 through September 19, 2015 (weeks 34-15 through 37-15). Claimant filed a timely request for hearing. On October 21, 2015, ALJ L. Lee conducted a hearing,³ and on October 22, 2015, issued Hearing Decision 15-UI-46400 in which she concluded that claimant was not available for work from August 23 through October 17, 2015 (weeks 34-15 through 41-15). On October 26, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On November 2, 2015, EAB issued Appeals Board Decision 15-EAB-1265, affirming Hearing Decision 15-UI-46400.

CONCLUSION AND REASONS: We agree with the ALJ, and conclude that claimant was not available for work during weeks 42-15 through 49-15 (October 18 through December 12, 2015).

To be eligible to receive benefits, unemployed individuals must be available for work. ORS 657.155(1)(c).⁴ 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 his labor market, which consisted of Cottage Grove, Eugene and Springfield. Eugene and Springfield are not within walking distance of Cottage Grove, where claimant lived. Claimant was therefore required to have reliable transportation to and from Eugene and Springfield on all days during all hours. Claimant, who does not have a car or a driver's license, was dependent on public transportation; the only available bus service operated from 7 a.m. to 7:45 p.m. Because of his lack of transportation, claimant was not capable of accepting or reporting for all suitable work opportunities within his labor market and was therefore unavailable for work during weeks 42-15 through 49-15.

³ We take official notice of the record in Hearing Decision 15-UI-46400. Any party that objects to our doing so must submit its objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such a timely written objection is received and sustained, the noticed facts will remain in the record.

⁴ Because the Department did not pay claimant benefits for any of the weeks at issue, claimant has the burden to prove by a preponderance of the evidence that benefits should have been paid to him. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). In other words, claimant has the burden to establish that, more likely than not, he was available for work during the weeks at issue.

At the hearing, claimant acknowledged that he quit his job in Eugene for the employer on August 23, 2015 because he no longer had reliable transportation – his 80- year old father was tired of driving him to work for day shifts that began at 6 a.m. or earlier. Claimant asserted, however, that his circumstances had changed and that his father and sister were now willing and able to drive him to and from work. Claimant provided contradictory testimony regarding transportation options available to him at the two hearings on his availability for work, however. At the October 21, 2015 hearing, claimant testified that because of his father’s unwillingness get up early in the morning, he was completely dependent on the bus to get to and from work. Audio Recording of 10/21/15 Hearing at 25:25 and 26:30. At the December 18 hearing, however, claimant testified that in the first or middle part of October 2015, his father changed his mind and decided he would drive his son to work. Audio Recording of 12/18/15 Hearing at 23:12. Claimant also testified that although his sister had previously been performing work for her husband’s business, she stopped doing this work in mid-October 2015; at that time, she became available to provide him with transportation to work. Audio Recording of 12/18/15 Hearing at 22:12. Claimant’s failure to mention his father’s change of mind and his sister’s availability at the October 21 hearing undermines the credibility of his testimony at the December 18 hearing. We therefore conclude that claimant’s circumstances remain unchanged from those that caused him to quit his job in August 2015. Due to a lack of reliable transportation, claimant was not capable of accepting and reporting to all suitable work opportunities in his labor market during weeks 42-15 through 49-15 (October 18 through December 12, 2015). Claimant was therefore unavailable for work during these weeks and is ineligible for unemployment benefits.

DECISION: Hearing Decision 15-UI-49817 is affirmed.

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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