

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0006

Modified
Eligible Weeks 9-15 through 35-15,40-15 and 47-15

PROCEDURAL HISTORY: On September 14, 2015, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 100316 concluded that claimant was not available for work from March 1 through September 5, 2015 (weeks 9-15 through 35-15), and decision # 102350 concluded that claimant was not available for work from August 2 through August 8, 2015 (week 31-15).¹ On September 22, 2015, claimant filed a request for hearing on decision # 100316. On October 5, 2015, decision # 102350 became final without a request for hearing having been filed. On November 4, 2015, ALJ Seideman issued Hearing Decision 15-UI-47088, concluding that claimant had withdrawn her request for hearing on decision # 100316, and dismissing her hearing request. On November 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On November 30, 2015, EAB issued Appeals Board Decision 2015-EAB-1376, reversing Hearing Decision 15-UI-47088 and remanding the matter for further development of the record.

On December 14, 2015, ALJ Seideman conducted a hearing, and on December 16, 2015, issued Hearing Decision 15-UI-49476, concluding that claimant had not withdrawn her request for hearing on decision # 100316, and that she was available for work from March 1 through May 2, 2015 (weeks 9-15 through 17-15), but not available for work from May 3 through September 5, 2015 (weeks 18-15 through 35-15), October 4 through 10, 2015 (week 40-15) and November 22 through 28, 2015 (week 47-15). On January 4, 2016, claimant filed an application for review with EAB.

Claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit its objection to this office, explaining in writing the basis for its objection, within ten days of the date on which this decision was mailed. OAR 471-041-0090(3) (October 29, 3006). Unless such an objection is received and sustained, the noticed fact will remain part of the record.

information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

No adversely affected party appealed the portion of Hearing Decision 15-UI-49476 in which the ALJ concluded that claimant had not withdrawn her request for hearing on decision # 100316. We therefore limit our review to whether claimant was available for work during the weeks at issue.

FINDINGS OF FACT: (1) On March 6, 2015, claimant filed an initial claim for unemployment benefits.

(2) Claimant claimed benefits for the periods March 6 through September 5, 2015 (weeks 9-15 through 35-15), October 4 through 10, 2015 (week 40-15), and November 22 through 28, 2015 (week 47-15), the weeks at issue.

(3) During the weeks at issue, claimant sought work as a flagger, cashier, waitress, and cook. Work as a flagger and cashier is performed all days, all hours. Work as a cook and waitress is performed all days, from 6 a.m. to 11 p.m. Claimant's labor market was Bend, Redmond and the surrounding area for work as a flagger, and Bend for work as a cashier, waitress and cook.

(4) From March 6 through May 5, 2015, claimant used her car to travel to job assignments. On May 5, her car broke down and was no longer operable. Claimant did not have the money to repair her car.

(5) After claimant's car broke down, claimant used public transportation and a taxi to travel to job assignments during the weeks at issue. She was also able to obtain rides from coworkers, a group of approximately 16 "reliable driver commuters." Transcript at 31; Exhibit 8. Using these modes of transportation, claimant was able to accept and report for work in Sun River, La Pine, Sisters and Redmond during the weeks at issue.²

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant was available for work during the weeks 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) (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.*

In Hearing Decision 15-UI-49476, the ALJ concluded that claimant was not available for work after her car broke down on May 5, 2015 because, after that date, she lacked transportation to report to all

² We take official notice of the following distances: 17 miles from Bend to Sun River, 15 miles from Bend to Redmond, 24 miles from Bend to Sisters, and 30 miles from Bend to LaPine. Any party that objects to our doing so must submit such 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 an objection is received and sustained, the noticed facts will remain in the record.

suitable work opportunities in her labor market. The ALJ noted that to get to work, claimant “had to rely on mass transit, friends, co-workers and walking. Sometimes that has been effective and at other times she did not have to [sic] ability to accept work.” Hearing Decision 15-UI-49476 at 4. The record shows, however, that claimant was able to accept and report for numerous work assignments in and possibly outside of her labor market during the weeks at issue. Contrary to the ALJ’s assertion, there is no evidence in the record that claimant was unable to accept a job assignment during the weeks at issue because she did not have transportation. We conclude that claimant demonstrated by a preponderance of evidence that she had reliable transportation that allowed her to report for jobs in her labor market during the weeks at issue. Claimant was therefore available for work from March 1 through September 5, 2015 (weeks 9-15 through 35-15), October 4 through 10, 2015 (week 40-15) and November 22 through 28, 2015 (week 47-15), and is eligible to receive unemployment benefits for these weeks.

DECISION: Hearing Decision 15-UI-49476 is modified, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 22, 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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