

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0185**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On January 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of November 22 through 28, 2015 (decision # 135112). Claimant filed a timely request for hearing. On February 9, 2016, ALJ Murdock conducted a hearing, and on February 10, 2016 issued Hearing Decision 16-UI-52754, affirming the Department's decision. On February 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant claimed benefits for the week of November 22 through 28, 2015 (week 47-15), the week at issue.

(2) Claimant's permanent residence was in Santa Ana, California. His normal labor market area, as defined by the Department, was the area surrounding Santa Ana, Los Angeles, Anaheim, Garden Grove and Irvine, California.

(3) During the week at issue, claimant was on vacation in the state of New Mexico from November 24 through 28, 2015. While in New Mexico, claimant made contact with two employers to inquire about a job opening or apply for a job opening. One of the employers was located in Los Angeles. The other was located in Scottsdale, Arizona.

(4) Claimant did not make contact with any employers in New Mexico to inquire about job openings or apply for job openings.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant was not available for work during the week 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 who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work. ORS 657.155(2)(a). The presumption may be overcome if the individual establishes that the individual has conducted a bona fide

search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies, or was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market. ORS 657.155(2)(b). Thus, an individual shall be considered available for work only if he establishes that he was physically present in the normal labor market area as defined by OAR 471-030-0036(6), every day of the week, unless the individual is actively seeking work outside his or her normal labor market area OAR 471-030-0036(3) (February 23, 2014).

An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. OAR 471-030-0036(6)(a). The geographic area shall be defined by employees of the Department. *Id.* An individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a). With few exceptions, none of which apply here, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B).

In the present case, claimant's normal labor market, as defined by the Department, was in southern California. Claimant left his normal labor market area for the major portion of the week at issue, and therefore is presumed to have been unavailable for work that week. Claimant was in New Mexico on vacation, and was not required to be there to apply for suitable employment within his normal labor market. Thus, to overcome the presumption that he was unavailable for work, claimant was required to establish that he actively sought work in New Mexico. He therefore was required to show that he conducted at least five work seeking activities, with at least two of those being direct contact with an employer in New Mexico that might hire him.

Claimant did not make contact with any employers in New Mexico to inquire about job openings or apply for job openings. He therefore failed to establish that he actively sought work in New Mexico, or overcome the presumption that he was unavailable for work during the week at issue. Claimant therefore is ineligible for benefits for that week.

**DECISION:** Hearing Decision 16-UI-52754 is affirmed.

Susan Rossiter and D. P. Hettle;  
J. S. Cromwell, not participating.

**DATE of Service:** March 2, 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](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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