

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0246

Reversed
Eligible

PROCEDURAL HISTORY: On January 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was available for work during the weeks October 25 through November 21, 2015, and November 29, 2015 through January 2, 2016 (decision # 81901). The employer filed a timely request for hearing. On February 11, 2016, ALJ Vincent conducted a hearing, and on February 16, 2016, issued Hearing Decision 16-UI-53044 concluding claimant was not available for work during the weeks of October 25 through November 21, 2015, November 29 through January 2, 2016, and from January 10 through January 16, 2016 (weeks 43-15 through 46-15, weeks 48-15 through 52-15, and week 02-16). On March 2, 2016, claimant filed an application for review of Hearing Decision 16-UI-53044 with the Employment Appeals Board (EAB).

No adversely affected party requested review of that portion of Hearing Decision 16-UI-53044 concluding claimant was not ineligible for benefits for the week including January 17 through 23, 2016 (week 03-16). We therefore confined our review to the remaining weeks at issue.

Claimant's written argument contained information that was not part of the hearing record. Claimant also failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On October 30, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed and was allowed benefits for the weeks including October 25 through November 21, 2015, November 29, 2015 through January 2, 2016 and from January 10 through 16, 2016 (43-15 through 46-15, 48-15 through 52-15, and 02-16), the weeks at issue.

(2) Geiser Grand employed claimant as a hospitality worker at its Baker City hotel during the weeks at issue. Claimant's labor market was Baker City and its surrounding area. In claimant's labor market, the customary days and hours for work as a hospitality worker were all days, 6:00 a.m. through 12:00 a.m.

(3) On September 4, 2013, claimant made a written request to her employer to have Sundays off to attend church services. Exhibit 1. Claimant generally attended a morning service from 10:00 a.m. to 12:00 p.m. and an evening service from 7:00 p.m. to 8:30 p.m. However, during winter months, claimant often attended only the morning service due to weather conditions and the long drive from her residence. Attendance at the services was “not a mandatory requirement [of her religion]”, but it was “a personal requirement for [her]” based on her personal morals. Audio Record ~22:00 to 23:15; 25:00 to 27:00.

(4) On January 16, 2016, based upon a request from her supervisor, claimant submitted a modified request to the employer stating she could be available for work Sunday afternoons after 1:00 p.m., which would allow her to attend the morning church service.

CONCLUSIONS AND REASONS: We disagree with the ALJ. 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) (January 8, 2006). An individual must be:

- (a) 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, unless such part time or temporary opportunities would substantially interfere with return to the individual’s regular employment; and
- (b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and
- (c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time; * * *

OAR 471-030-0036(3). Factors governing whether work may be considered “suitable” include the “degree of risk involved to the health, safety and morals of the individual.” ORS 657.190. Here, the Department initially granted claimant benefits because it concluded that her desire to attend religious services on Sunday made work on Sundays unsuitable for claimant under ORS 657.190. Audio Record ~10:15 to 12:30.

In Hearing Decision 16-UI-53044, after finding “claimant’s attendance at church services later on Sundays is optional” and “[d]uring the periods at issue the claimant only attended morning services on Sunday,” the ALJ concluded claimant was not available for work during the weeks at issue, reasoning,

Claimant was not willing to work on Sundays . . . because she attended church services at her church on Sunday mornings. Because claimant was not willing to work during *all* of the hours and days of the week customary for the work she sought, claimant was not available for work. . . . While the Free Exercise Clause of the First Amendment, which commands that “Congress

shall make no law . . . prohibiting the free exercise [of religion]” . . . protects some religious observances, it does not protect all such observances. . . . While claimant’s attendance on Sunday mornings was based on a strongly held religious belief, her attendance on Sunday afternoons was not governed by such a belief.

Hearing Decision 16-UI-53044 at 2, 3. However, although claimant conceded that her attendance at Sunday services was “not a mandatory requirement [of her religion]”, she also asserted it was “a personal requirement for [her]” based on her personal morals, and that is why, on September 2013, she requested Sundays off - to attend both services. Audio Record ~22:00 to 23:15; 25:00 to 27:00; Exhibit 1. The record therefore shows that it is more likely than not that claimant's desire to attend both services was based on her sincerely held religious beliefs. That claimant sometimes had to miss the evening service out of necessity due to inclement weather or winter driving conditions, or that she was willing to miss the evening service if necessary to accommodate the employer's business needs and remain employed, do not change the outcome of this decision because those factors do not mean that her desire to observe her religious beliefs at the evening service was any less sincere than her observance of those same beliefs at the morning service.

For the reasons stated, we conclude claimant's restrictions on her availability to work Sundays to observe her sincerely held religious beliefs did not make her unavailable for work for the purposes of receiving unemployment insurance benefits. Accordingly, claimant was available for work during the weeks at issue.

DECISION: Hearing Decision 16-UI-53044 is set aside, as outlined above.¹

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

DATE of Service: March 31, 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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¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.