

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0275**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On November 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of September 6, 2015 through October 17, 2015 (decision # 95601). Claimant filed a timely request for hearing. On February 18, 2016, ALJ S. Hall conducted a hearing at which the employer did not appear, and on February 19, 2016 issued Hearing Decision 16-UI-53348, affirming the Department's decision. On March 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant's argument also contained information that was not part of the hearing record, and she failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Claimant worked for United Parcel Service, Inc. Claimant's usual work for the employer was as a truck driver.

(2) Sometime before the week beginning September 6, 2015, claimant's driver's license was suspended as a result of a criminal charge for driving under the influence of intoxicants (DUII), and the employer could no longer allow claimant to drive one of its trucks. Beginning the week of September 6, 2015, the employer assigned claimant to work loading and sorting packages in its facility on Monday, Tuesday and Wednesday nights until she was able to arrange for a hardship license that would restore her driving privileges and allow her to return to her regular work as a driver.

(3) On September 10, 2015, claimant filed an initial claim for unemployment insurance benefits. The claim was determined valid. Claimant claimed benefits for the weeks of September 6, 2015 through October 17, 2015 (weeks 36-15 through 41-15), the weeks at issue.

(4) After September 6, 2015, when the employer assigned claimant to work sorting and loading packages, claimant refused to work on Mondays because on that day there was a higher volume packages than on the other days of the week. Claimant thought that the weight of those packages was “too physical on her body” and she “did not want to kill herself before returning back to her usual work” as a driver, assuming she was given a hardship license. Audio at ~7:24.

(5) On Tuesday and Wednesday, September 16 and 17, 2015 and September 22 and 23, 2015, claimant sorted and loaded packages for the employer. On Tuesday and Wednesday, September 29 and 30, 2015, claimant did not work since the employer did not need her services.

(6) Beginning on Tuesday and Wednesday, October 6 and 7, 2015, claimant changed the alcohol treatment classes she was court-ordered to attend as a result of the DUII to evening classes. Attending those evening classes did not allow claimant to continue reporting for work as a night sorter and loader. Claimant changed the scheduling of the classes because she thought she would obtain the hardship license sometime in October 2015, and she did not want the classes to interfere with her return to her regular work as a day shift driver for the employer. Claimant did not work as sorter and loader after October 7, 2015.

(7) Claimant did not seek work during the weeks at issue with any potential employers other than the employer for a few reasons, including that she “already had a job she would be returning to” when she obtained the hardship license, and she thought no other employer would hire her for only a “week or two.” Audio at ~17:07.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks of September 6, 2015 through October 17, 2015. Claimant is not eligible to receive benefits during those weeks.

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 all 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.*

During the weeks at issue, when claimant was assigned to work for the employer as a sorter and loader on Mondays through Wednesdays because she had lost her driving privileges, claimant refused to work on Mondays because she thought the work was too difficult on Mondays given the volume of packages she needed to handle on that day. Audio at ~7:24. However, claimant did not contend that she was or would likely be injured by the Monday work, as opposed to when she was performing the same work on Tuesdays and Wednesdays, or that she had any medical condition that made such work on Mondays physically unsuitable for her. That claimant performed the same work on Tuesdays and Wednesdays, with no apparent burden or hardship, suggests the work on Mondays was not beyond her reasonable capacity to perform. Also, while claimant might have been court ordered to take alcohol treatment classes, by changing the classes to Tuesday and Wednesday nights, the classes interfered with her ability

to work as a loader and sorter after October 7, 2015, even if she did so in anticipation that she would soon be returning to day shift work as a driver. As well, it appears that when claimant was working as a sorter and loader she was unwilling to pursue work opportunities with other employers since she thought she would very soon have her hardship license and would be returning to her regular work as a driver for the employer. By citing each of these alleged impediments to working as a sorter and loader on Mondays through Wednesdays, claimant showed that she imposed conditions that substantially reduced her opportunities to work during the weeks at issue.

Claimant was not available to work during the weeks of September 6, 2015 through October 17, 2015. Claimant is not eligible to receive benefits during those weeks.

**DECISION:** Hearing Decision 16-UI-53348 is affirmed.

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

**DATE of Service:** April 8, 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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