

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0352**

*Affirmed*  
*Ineligible Week 3-16*

**PROCEDURAL HISTORY:** On February 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from January 17, 2016 to January 23, 2016 (decision # 83124). Claimant filed a timely request for hearing. On March 3, 2016, ALJ Shoemake conducted a hearing, and on March 10, 2016 issued Hearing Decision 16-UI-54768, affirming the Department's decision. On March 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) On October 4, 2015, claimant filed an initial claim for benefits. She filed a weekly claim for benefits for the week of January 17, 2016 to January 23, 2016, the week at issue.

(2) Marriott Hotel Services, Inc. employed claimant during the week at issue as a food server. The employer asked claimant to work during the day on January 21, 2016, during what would normally have been claimant's lunch hour. Claimant declined the employer's request to work because she had a one-hour medical appointment she had scheduled several months ahead of time during the period the employer asked her to work.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant was not available for work for the week of January 17, 2016 to January 23, 2016.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). An individual is only considered "available for work" if she is willing to work and capable of reporting for work during all the usual hours and days customary for the type(s) of work being sought. OAR 471-030-0036(3)(a) and (3)(b). Individuals who miss work opportunities due to illness, injury, incarceration or other reasons are considered not available for work. *See e.g.* OAR 471-030-0036(3)(f).

Claimant argued that she should not be ineligible for benefits based on her missed opportunity to work on January 21, 2016 because she had an important medical appointment, scheduled the appointment three months in advance, and the employer had accepted that she could not work that shift. There is nothing in this record disputing claimant's testimony. However, the applicable rules do not provide an exception to the availability requirements for medical appointments.

Claimant also argued that she should not be ineligible for benefits because she tried to schedule her appointment at a time that would not interfere with her normal work schedule. However, the hours an individual must be available for work as a condition of being eligible for benefits are not based upon the individual's work hours, but are based upon the workdays and hours customary for the type of work being sought. In the food service field, the customary hours would logically include the lunch hour. Regardless of her efforts to minimize the impact of her medical appointment on her availability for work during the customary hours, the fact remains that the employer asked her to work and she declined.

Finally, claimant argued that she should not be ineligible for benefits for the whole week because of her unavailability during a one-hour period. Under the Department's laws, however, benefit eligibility determinations are made on a week-by-week basis. Therefore, if an individual is not available for work for any portion of a week, even just an hour or a smaller increment of time, the individual is deemed ineligible for benefits for the entire week at issue.

The record shows that claimant was not available for work during her medical appointment on January 21, 2016. Although claimant had a good reason for declining the work opportunity and attempted to minimize the impact of her previously scheduled appointment on her availability for work, the Department's laws and rules do not allow exceptions to the availability requirement for the circumstances claimant described. Therefore, we must conclude that claimant was not available for work during the week of January 17, 2016 to January 23, 2016, and she is ineligible for benefits.

**DECISION:** Hearing Decision 16-UI-54768 is affirmed.

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](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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