

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0382

Affirmed
Ineligible Weeks 36-15 to 39-15

PROCEDURAL HISTORY: On February 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 6, 2015 to October 3, 2015 (decision # 94636). Claimant filed a timely request for hearing. On March 11, 2016, ALJ Wyatt conducted a hearing, and on March 18, 2016 issued Hearing Decision 16-UI-55362, affirming the Department's decision. On March 31, 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) From September 6, 2015 to October 3, 2015 (weeks 36-15 to 39-15) claimant filed weekly claims for unemployment insurance benefits.

(2) During the weeks at issue, claimant sought work and was employed as an on-call nutrition server. Her labor market included LaPine, Sunriver and Bend, Oregon. In claimant's labor market, the customary hours and days for nutrition servers included weekdays from 7:00 a.m. to 5:00 p.m.

(3) On September 11, 2015, claimant notified her employer that she was not available for work because of her husband's life-threatening medical condition. On September 15, 2015, claimant told the employer she was not available to work until 1:00 p.m. because of her husband's medical condition. On September 22, 2015, claimant notified the employer she could not work until 1:00 p.m. because her husband had a medical appointment. On October 2, 2015, claimant notified her employer that she was not available for work so she could to attend an interview with a state agency that she had set before beginning work with the employer.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant was not available for work from September 6, 2015 to October 3, 2015 (weeks 36-15 to 39-15).

ORS 657.155(1)(c) requires that claimants be available for work as a condition of being eligible for unemployment insurance benefits. Under OAR 471-030-0036(3)(a), the Department defines "available for work" to include, in pertinent part, being willing and capable of accepting work opportunities during all of the usual hours and days of the week customary for the work being sought. An individual who misses work during a week, even if for illness or injury, is not considered "available for work." See OAR 471-030-0036(3)(f)(A).

In this case, claimant missed four opportunities to work during the weeks at issue, three times because of her husband's life-threatening medical condition and once to attend an interview with a state agency that she arranged before working for the employer. In other words, claimant had good reasons for taking time off work on each of the four days in question. For purposes of receiving unemployment insurance benefits, however, claimant was required to be available for work each weekday between 7:00 a.m. and 5:00 p.m. without exception, not even for serious medical issues. Claimant conceded that she limited her willingness to work on-call shifts for the employer on September 11th or October 2nd, and the hours she was willing to work on September 15th and 22nd. Therefore, on each of those four days, claimant was not available for work during all of the usual hours of her work. Unemployment insurance benefit eligibility is determined on a week-by-week basis, not a day-by-day or hour-by-hour basis. Therefore, it is immaterial to our determination that claimant was only unavailable for work for one day, or half a day, during each of the four weeks at issue. An individual who is not available for any increment of work during a week, no matter how small, must be considered ineligible for benefits for the entire week. Therefore, we must conclude that claimant was not available for work each week from September 6, 2015 to October 3, 2015 (weeks 36-15 to 39-15).

DECISION: Hearing Decision 16-UI-55362 is affirmed.

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

DATE of Service: April 21, 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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