

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0486**

*Affirmed*  
*Ineligible Weeks 52-15 through 5-16*

**PROCEDURAL HISTORY:** On February 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 105230) concluding claimant was not available for work from December 27, 2015 through February 6, 2016 (weeks 52-15 through 5-16). Claimant filed a timely request for hearing. On April 1, 2016, ALJ Shoemake conducted a hearing, and on April 8, 2016 issued Hearing Decision 16-UI-56834, affirming the Department's decision. On April 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the hearing record and claimant's written argument.

**FINDINGS OF FACT:** (1) On November 20, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed and was denied benefits for the period of December 27, 2015 through February 6, 2016 (weeks 52-15 through 5-16), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a janitor and cashier. Claimant's labor market area was Portland, Beaverton, Lake Oswego and Tigard.

(3) Claimant's Oregon identification card expired in August 2015 and he did not have an unexpired identification that could be used to verify his identity for purposes of the federal Employment Eligibility Authorization Form (Form I-9) until February 26, 2016. The Form I-9 is used to verify that an individual is authorized to work lawfully in the United States.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude claimant was not available for work from December 27, 2015 through February 6, 2016.

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 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.*

The Department denied claimant's claim for benefits for the weeks at issue, concluding that claimant was not available for work because claimant did not have a current identification card. The Immigration Reform and Control Act (IRCA) requires all employers to verify the identity and employment authorization of each individual they hire for employment in the United States. *See* 8 USC § 1324a. A newly hired employee presents must present documentation to verify his identity and employment authorization so that the employer can complete the Form I-9 and document such verification. *See* 8 USC § 1324a(b); 8 CFR § 274a.2. An employer must examine evidence of an employee's identity within three business days of the employee's first day of employment, and record the information on the Form I-9. 8 CFR § 274a.2(a)(3)(b)(B). A document establishing identity must be an original, unexpired document. *Id.* Failure of the employer to ensure proper completion of Form I-9 may result in the imposition of civil or criminal penalties, including fines. *See* 8 § CFR 274a.10.

Claimant had no unexpired identification card during the weeks at issue that was suitable for the employer to examine for purposes of complying with the IRCA. Claimant's inability to show an employer the required documentation made him incapable of accepting and reporting for any suitable work opportunities within the labor market in which he sought work. Claimant's failure to maintain proper identification imposed a condition which substantially reduced his opportunities to return to work at the earliest possible time. Claimant asserted in his written argument that he would have renewed his Oregon identification after receiving his first unemployment benefit check. While claimant might have done so, that does not change the fact that he was not available for work under ORS 657.155 during the weeks at issue.

The claimant was not available for work for each week at issue. Thus, the claimant is not entitled to benefits for the period December 27, 2015 through February 6, 2016 (weeks 52-15 through 5-16).

**DECISION:** Hearing Decision 16-UI-56834 is affirmed.

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

**DATE of Service:** May 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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