

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0737

Affirmed
Ineligible Weeks 13-16 through 20-16

PROCEDURAL HISTORY: On April 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 80555) concluding that claimant was not available for work from March 27 through April 16, 2016 (weeks 13-16 through 15-16). On May 6, 2016, the Department issued the following two decisions: decision # 80051 concluded that claimant was not available for work from April 17 through 30, 2016 (weeks 16-16 and 17-16), and decision # 82335 concluded that claimant did not actively search for work from April 24 through 30, 2016 (week 17-16). Claimant filed timely hearing requests. On June 2, 2016, ALJ M. Davis conducted a consolidated hearing. On June 2, 2016, Judge Davis issued the following hearing decisions: Hearing Decision 16-UI-60851 modified decision #80051 by finding that claimant was not available for work from April 17 through May 21, 2016; Hearing Decision 16-UI-60852 affirmed decision # 82335; and Hearing Decision 16-UI-60853 affirmed decision # 80555. On June 17, 2016, claimant filed an application for review of all three hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-60851, 16-UI-60852, and 16-UI-60853. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 16-EAB-0735, 16-EAB-0736, and 16-EAB-0737).

With his application for review, claimant submitted a document which was not admitted into evidence at the hearing: a copy of a "Work Search History," which constitutes a record of the information that claimant provided to the Department when he filed his weekly claims online for unemployment benefits for weeks 15-16 through 17-16. Under OAR 471-041-0090 (October 29, 2016), EAB may consider new information if the party offering the information demonstrates that circumstances beyond the party's control prevented the party from presenting the information at the hearing. The hearing record shows that claimant submitted the following documents to the ALJ prior to the hearing: a copy of a "Food Handler Certification of Completion," a letter from "NMBC Medical Centers" showing that claimant had an April 7, 2016 appointment; and a copy of claimant's "Work Search History" for weeks 15-16 through 17-16, which is the same document claimant included with his application for review. Although the ALJ stated that she was admitting all documents submitted by claimant as Exhibit 1 (Audio recording at 5:13), the "Work Search History" was not included with the exhibit. Based on the apparent

error of the ALJ, we conclude that claimant demonstrated that circumstances beyond his reasonable control prevented him from presenting the information in the “Work Search History” at the hearing. The “Work Search History” is marked as EAB Exhibit 2, and a copy of EAB Exhibit 2 is included with the copy of this decision mailed to the parties. Any party that objects to the admission of EAB Exhibit 2 must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 2 will remain part of the record.

FINDINGS OF FACT: (1) Claimant filed his initial claim for benefits on March 31, 2016. Claimant claimed benefits for weeks 13-16 through 20-16 (March 27 through May 20, 2016), the weeks at issue. The Department paid claimant unemployment benefits for week 17-16, but denied him benefits for all the other weeks at issue.

(2) At the time claimant filed his initial claim for benefits, he was living in Coos Bay, Oregon, the city which the Department determined was his labor market area. Claimant planned to move to Tennessee, however, and made arrangements to leave Coos Bay on March 25, 2016 to accept a job he had been offered. He cancelled these plans, however, because he had an appointment to see his doctor on April 7, 2016. Audio recording at 14:00.

(3) During weeks 13-16 and 14-16 (March 27 through April 9, 2016), claimant applied for work in his customary occupation as a cook with three employers located within commuting distance of the area in Tennessee where claimant planned to live.

(4) During week 15-16 (April 10 through 16, 2016), claimant applied for work as a cook with five employers located within commuting distance of the area in Tennessee where he planned to live. EAB Exhibit 2.

(5) During week 16-16 (April 17 through 23, 2016), claimant applied for work with two employers within commuting distance of the area in Tennessee where he planned to live, and performed three other work seeking activities. EAB Exhibit 2.

(6) On April 21, 2016, claimant’s mother underwent surgery. On April 29, 2016, claimant’s mother was released from the hospital and claimant began providing 24 hour care to her. Because of the need to care for his mother, claimant did not look for work during week 17-16 (April 24 through 30, 2016), and was not available for work during weeks 17-16 through 20-16 (April 24 through May 20, 2016).

CONCLUSION AND REASONS: Claimant was not available for work during the weeks at issue, weeks 13-16 through 20-16.

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.*

In Hearing Decisions 16-UI-60853 and 16-UI-60851, the ALJ concluded that claimant was not available for work during weeks 13-16 through 20-16 (March 27 through May 21, 2016), because he sought work in Tennessee, and not in Oregon, his labor market area. According to the ALJ, “an individual is not considered available for work if he is actively seeking work outside his normal labor market area.” Hearing Decision 16-UI-60851 and 16-UI-60853 at 2-3. In support of her position, the ALJ cited OAR 471-030-0036(3)(d)(A), which provides that for purposes of ORS 657.155(1)(c), an individual is considered available for work if the individual is “[p]hysically present in the individual’s normal labor market” for each day of the week, unless the individual is “actively seeking work outside his or her normal labor market.” While we agree with the ALJ’s conclusion regarding claimant’s availability for work, we disagree with her reasoning. OAR 471-030-0036(3)(d)(A) applies only to circumstances where a claimant is not physically present in the claimant’s labor market for every day of the week for which benefits are claimed and searching for work outside the labor market. Here, claimant *was* present in his labor market – Coos Bay, Oregon – for every day of each for which he claimed benefits. We therefore analyze claimant’s availability under the general standard of OAR 471-030-0036(3), to determine if, during the weeks at issue, he was willing to work, capable of reporting to all work opportunities, and whether he imposed conditions that limited his opportunities to return to work at the earliest possible time.

During weeks 13-16 through 16-16, claimant looked for no jobs in Coos Bay, an area where he would have been immediately able to begin working, had he been offered a job. His decision to abandon his move to Tennessee on March 26 and forgo a job opportunity in that state because he needed to see his Coos Bay doctor on April 7 shows that during weeks 13-14 and 14-16, he was not capable of accepting and reporting for the work opportunities he sought in Tennessee. In regard to weeks 15-16 and 16-16, we conclude that by looking for work only with employers located within commuting distance of the area in Tennessee where he planned to move, claimant imposed a condition that limited his opportunity to return to work at the earliest possible time.¹

During week 17-16, claimant testified that he did not look for work because he needed to provide 24-hour care to his mother, who was recovering from surgery. Claimant also testified that he was unavailable to work from 18-16 through 20-16 because he continued to care for his mother during those weeks. Audio recording at 24:54, 25:47 and 32:05. Claimant therefore did not actively seek work during week 17-16, and was not available for work during weeks 17-16 through 20-16.

Claimant was not available to work during weeks 13-16 through 20-16, and did not actively search for work during week 17-16. He is ineligible to receive unemployment benefits for those weeks.

DECISION: Hearing Decisions 16-UI-60851, 16-UI-60852, and 16-UI-6-853 are affirmed.

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

¹ Claimant testified that he had originally planned to leave for Tennessee on March 26 and begin work with a new employer as soon as he arrived. Audio recording at 13:26. Exhibit 1 includes a receipt a U Haul trailer claimant had rented for this move. The receipt shows that claimant planned to return the trailer in Dresden, Tennessee on April 2, 2016, indicating that it would have taken claimant approximately one week to move to Tennessee. The length of time it would take claimant to get to Tennessee to begin working further supports the conclusion that his out-of-state-only job search was a condition that limited his opportunity to return to work at the earliest possible time.

DATE of Service: July 26, 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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