

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1108**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On August 11, 2016, the Oregon Employment Department (the Department) served two notices of administrative decision, the first concluding claimant was not available for work during the weeks of March 20, 2016 through July 9, 2016 (decision # 150812) and the second concluding claimant voluntarily left work without good cause (decision # 154939). Claimant filed timely requests for hearing. On September 7, 2016, ALJ M. Davis conducted a consolidated hearing, and on September 8, 2016, issued two hearing decisions, the first modifying decision # 150812 (Hearing Decision 16-UI-67075) and concluding claimant was not available for work during the weeks of March 20, 2016 through May 14, 2016 and May 29, 2016 through July 9, 2016 and the second reversing decision # 154939 (Hearing Decision 16-UI-67076). On September 23, 2016, claimant filed an application for review of Hearing Decision 16-UI-67075 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) In approximately 2011, claimant began working for Root Tamers. In March 2016, Root Tamers laid claimant off from full-time work due to financial constraints.

(2) On March 24, 2016, claimant filed an initial claim for benefits. Claimant claimed and was paid benefits for the weeks of March 20, 2016 through May 14, 2016 and May 29, 2016 through July 9, 2016 (weeks 12-16 through 19-16 and weeks 22-16 through 27-16), the weeks at issue.

(3) During the weeks at issue, claimant worked at Long Branch Saloon, the employer, as an on-call bartender. During the weeks at issue, claimant told the employer that she would work only on an on-call basis and did not want to work full-time or part-time on a set schedule. Claimant's refusal to work a set schedule was based on her hope that she would return to work for Root Tamers and because she did not want her position with the employer to interfere with her ability to do so. During the weeks at issue, the

employer hired part-time and full-time employees, but did not offer these positions to claimant because she had previously stated she only wanted to work on an on-call basis. Audio at ~13:48, ~14:30.

(4) Sometime in early June 2016, Root Tamers told claimant it could not afford to return her to work. Soon thereafter, claimant gave her landlord notice that she was moving. In July 2016, claimant relocated from Oregon to Redding, California.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the period March 20, 2016 through May 14, 2016 and May 29, 2016 through July 9, 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.*

Although claimant might have hoped to return to full-time work for Root Tamers and for that reason did not want to work for Long Branch Saloon on anything other than an on-call basis during the weeks at issue, that hope meant that she unwilling to work in the part-time or full time positions that the Long Branch Saloon had open during the weeks at issue. By holding out based on a hoped for return to her job at Root Tamers in preference to taking available positions at Long Branch Saloon, claimant was not willing to report for all work opportunities throughout her labor market. Claimant’s unwillingness to work for Long Branch Saloon in capacities that she thought would interfere with her ability to return to work for Root Tamers also imposed a condition that interfered with her ability to return to full-time work at the earliest possible time. Consequently, claimant was not available for work during the weeks at issue. Claimant was not available to receive benefits during those weeks.

**DECISION:** Hearing Decision 16-UI-67075 is affirmed.

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

**DATE of Service:** October 20, 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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