

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1258

Affirmed
Ineligible Week 25-16

PROCEDURAL HISTORY: On October 5, 2016, the Oregon Employment Department (the Department) served notice of the following administrative decisions: decision # 55812 concluded that claimant was not available for work from May 15 through 21, 2016 (week 20-16); decision # 85752 concluded that claimant was not available for work from June 19 through June 25, 2016 (week 15-16); and decision # 55811 concluded that claimant was not available for work from August 28 through September 3, 2016 (week 35-16). On October 24, 2016, the Department served notice of amended administrative decision # 85254 which concluded that claimant was not available for work from April 10 through 16, 2016 (week 15-16). Claimant filed timely requests for hearing. On November 8, 2016, ALJ Frank conducted a consolidated hearing and on November 9, 2016 issued the following hearing decisions: Hearing Decision 16-UI-70871 concluded that claimant was available for work during week 15-16; Hearing Decision 16-UI-70870 concluded that claimant was available for work during week 20-16; Hearing Decision 16-UI-70872 concluded that claimant was not available for work during week 25-16; and Hearing Decision 16-UI-70869 concluded that claimant was available for work during week 35-16. On November 14, 2016, claimant filed an application for review of Hearing Decision 16-UI-70872 with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On December 7, 2015, claimant filed an initial claim for unemployment benefits. Claimant claimed and the Department paid her benefits for week 25-16 (June 19 through 25, 2016), the week at issue.

(2) During week 22-16 (June 19 through 25, 2016), claimant worked 17 ½ hours as a payroll clerk for her employer, Whittier Wood Products. Claimant was ill on June 22, 2016, and took 3 hours of paid sick leave on that date. Audio Recording at 25:33.

(3) On Saturday, June 25, 2016, claimant worked 7.25 hours in the employer's retail store. This is work that claimant did not regularly perform for the employer.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant was not available for work during week 25-16.

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.* An individual who has an opportunity to perform suitable work during a week for which benefits are claimed, but who fails to report for such work due to illness is not considered available for work during that week. OAR 471-030-0036(3)(f)(A).

During the week at issue, June 19 through 25, 2016, claimant worked 17½ hours for her regular employer, but took 3 hours of paid sick on June 22 because she was ill. Because claimant missed an opportunity to perform suitable work due to illness, she was not available for work during that week and is ineligible for benefits.

Claimant asserted, however, that the employer permitted her to maintain a flexible schedule and that she "made up" work hours she missed on June 22 by working in the employer's retail store on June 25. We note that the applicable rule does not permit an individual to "make up" a work opportunity missed due to illness by performing work on another day during the week claimed. Because claimant missed three hours of work due to illness during week 15-16, she was not available for work and is ineligible to receive benefits for that week.

DECISION: Hearing Decision 16-UI-70872 is affirmed.

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

DATE of Service: December 5, 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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