

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1288**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On September 16, 2016 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of August 21, 2016 through September 10, 2016 (decision # 173132). Claimant filed a timely request for hearing. On October 21, 2016, ALJ S. Lee conducted a hearing, and on October 26, 2016 issued Hearing Decision 16-UI-69890, affirming the Department's decision. On November 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On April 28, 2016, claimant filed an initial claim for unemployment insurance benefits. Claimant's claim was determined valid with a weekly benefit amount of \$567.

(2) Claimant claimed but was not paid benefits for the weeks of August 21, 2016 through September 10, 2016 (weeks 34-16 through 36-16), the weeks at issue.

(3) Claimant's labor market was the Portland metropolitan area. Claimant initially sought work in the petrochemical industry, a field in which he had worked for 32 years. However, since there were few positions in this field in his labor market, claimant expanded his work search at the Department's instruction. After expanding his work search, claimant sought work a variety of positions including as a warehouse worker, forklift driver, teller, detailer, machine operator and supervisor.

(4) On August 17, 2016 (during week 33-160, claimant was offered and accepted a service worker position with TriMet that was to begin on August 29, 2016. The job with TriMet paid \$11.50 per hour and the wage would increase to \$15.20 per hour after the first eight days of work. On August 24 or 25, 2016 (during week 34-14), Kinder Morgan, a company in the petrochemical industry, offered claimant a position as a gas terminal operator that paid \$26.96 per hour and was expected to begin on September 19, 2016. Claimant accepted the job with Kinder Morgan and notified TriMet that he was declining the job it had offered him because he had received a better offer of work from Kinder Morgan.

(5) During the weeks at issue, claimant reported to the Department that he was seeking work. However, claimant was unwilling to accept the positions he reported to the Department that he had sought during

the weeks at issue because those jobs were not “better” than the job he had accepted with Kinder Morgan. Audio at ~18:51. Claimant also declined some job interviews because he thought those jobs were inferior to the Kinder Morgan job. Audio at ~19:07. Claimant also did not pursue any jobs other than the Kinder Morgan job because he wanted to be “totally available” for Kinder Morgan should it need him to do anything in advance of his starting date. Audio at ~22:04. Nor did claimant look for any temporary work opportunities that would have lasted until the September 19, 2016 start of the job with Kinder Morgan. Audio at ~20:05.

**CONCLUSIONS AND REASONS:** Claimant was not available for all suitable work during the weeks at issue. Claimant was not eligible to receive benefits for those weeks.

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 full time, part time and accept temporary work opportunities, and not impose conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time. *Id.* Because claimant was not paid benefits during the weeks at issue, he has the burden to demonstrate that he was available for all suitable work during the weeks at issue. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant candidly admitted during the hearing that after Kinder Morgan offered him the terminal operator position and he accepted it, he did not consider any of the jobs he reported to the Department as comprising his weekly job search because those jobs had less attractive terms than the Kinder Morgan job. As his testimony developed, it appeared that he did not actively try to find jobs equally attractive or more attractive than the Kinder Morgan job during the weeks at issue, particularly when he stated that he wanted to remain “totally available” should Kinder Morgan want him to do anything in the interim between when he accepted its offered job and when that job started. Audio at ~21:34. Nor did claimant seek out temporary work opportunities during the interim period until the job with Kinder Morgan started. Because claimant was not willing to work full time, part time and accept temporary work opportunities, and imposed conditions which substantially reduced his opportunities to return to work at the earliest possible time, he was not available for work during the weeks at issue.

Claimant was not available for work during the weeks at issue. Claimant is not eligible to receive benefits for those weeks.

**DECISION:** Hearing Decision 16-UI-69896 is affirmed.

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

**DATE of Service:** December 13, 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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