

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1294**

*Affirmed*  
*Ineligible Weeks 33-16 through 42-16*

**PROCEDURAL HISTORY:** On October 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 145346) concluding that claimant was not available for work from August 14 through September 24, 2016 (weeks 33-16 through 38-16). Claimant filed a timely request for hearing. On October 27, 2016, ALJ M. Davis conducted a hearing, and on October 28, 2016, issued Hearing Decision 16-UI-70103, concluding that claimant was not available for work from August 14 through October 22, 2016 (weeks 33-16 through 42-16). On November 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a letter dated November 16, 2016 from her health care provider regarding her inability to work; the letter was not offered into evidence at the hearing. Under OAR 471-041-0090, EAB may consider new information not offered into evidence at the hearing if the party presenting the new information shows that circumstances beyond the party's reasonable control prevented the party from presenting the information at the hearing. Claimant provided no reason why she was unable to submit the letter at the hearing. Claimant's request to present new information is therefore denied, and EAB considered only information received into evidence at the hearing in reaching this decision.

Even if we had considered the November 16 letter submitted by claimant, it would not have changed the outcome of this decision. In her letter, claimant's health care provider notes that claimant was hospitalized from September 29 through October 2, 2016, and was evaluated by the health care provider on October 11, 2016. The health care provider states that "for the above listed dates and currently [claimant] is unable to work." While it is not entirely clear the dates to which the health care provider is referring, the letter appears to support the conclusion we have reached in this decision – that due to her medical condition, claimant was unavailable for work because she was not capable of reporting for all work opportunities in her labor market.

**FINDINGS OF FACT:** (1) On May 9, 2016, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks 33-16 through 42-16. The Department paid her benefits for weeks 33-16 through 38-16, and did not pay her benefits for weeks 39-16 through 42-16.

(2) Claimant's labor marker was the Eugene Springfield area. Her customary occupation was that of an operations lead, work which is normally performed Monday through Friday during the day shift.

(2) Some time prior to August 14, 2016, claimant began to experience health problems that made it difficult for her to walk for more than a few minutes before she needed to sit down because of pain she was feeling. Claimant was diagnosed with a number of medical conditions, including deep vein thrombosis in her leg, a pulmonary embolism in her lungs, a possible blood clot in her heart, and an abnormally fast heart rate. Exhibit 1. Claimant was hospitalized in early October 2016; after she was discharged on October 2, 2016, her health care providers told her to "take it really easy" and only to engage in as much physical activity as she could tolerate without feeling pain. Audio Recording at 14:22. Claimant continued to be unable to walk for more than one to two minutes at a time before needing to sit down because of pain she was feeling in her chest and legs.

(3) Because the amount of physical activity in which she could engage was extremely limited, claimant looked only for work she could perform from her home during the weeks at issue. During the weeks at issue, claimant looked for work as a call agent, bookkeeper, transcriptionist and clerical worker.

**CONCLUSION AND REASONS:** Claimant was not available for work during weeks 33-16 through 42-16 (August 14 through October 22, 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.* An individual with a "permanent or long-term 'physical or mental impairment' (as defined at 29 CFR 1630.2(h))<sup>1</sup> which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work." OAR 471-030-0036(3)(e).

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<sup>1</sup> 29 C.F.R. §1630.2(h) defines "physical or mental impairment" as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Claimant was not willing to or capable of reporting to all work opportunities in her labor market because she could only accept jobs that would allow her to work from her home. Claimant's medical issues appear to constitute "physical impairments" under 29 CFR §16329.2(h). However, these impairments prevented her from working outside of her home, and not merely from working full time or during particular shifts. As a result, the exception to the normal availability for work requirements in OAR 471-030-0036(3)(e) did not apply to claimant's circumstances.

Claimant was not available for work during weeks 33-16 through 42-16. She is ineligible to receive unemployment benefits for these weeks.

**DECISION:** Hearing Decision 16-UI-70103 is affirmed.

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

**DATE of Service:** December 12, 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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