

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1410

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 72206) concluding claimant was not able to work from September 11, 2016 to October 15, 2016 (weeks 37-16 through 41-16). Claimant filed a timely request for hearing. On December 7, 2016, ALJ R. Frank conducted a hearing, and on December 15, 2016 issued Hearing Decision 16-UI-73018, concluding claimant was not able to work from September 11, 2016 to December 3, 2016 (weeks 37-16 through 48-16). On December 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Beginning July 23, 2016, claimant began a physician-ordered medical leave of absence from his regular employment. Claimant's physician prohibited him from performing any work.

(2) On September 11, 2016, claimant filed an initial claim for unemployment insurance benefits. He claimed benefits each week from September 11, 2016 through December 3, 2016, the weeks at issue.

(3) Throughout all the weeks at issue, claimant was not physically capable of performing any work, and was restricted by his physician from performing any work. As of November 11, 2016, claimant's physician anticipated claimant might be capable of returning to light duty in one month, and to unrestricted duty in two or three months. During each of the weeks at issue claimant did not seek any work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was not able to work or available for work, and did not actively seek work from September 11, 2016 to December 3, 2016 (weeks 37-16 through 48-16).

ORS 657.155(1)(c) requires that individuals be able to work, available for work, and actively seek work as a condition of being eligible to receive unemployment insurance benefits. An individual is "able to work" only if he is physically capable of performing the type(s) of work sought and is able to perform some work. OAR 471-030-0036(2) (February 23, 2014). An individual is "available for work" only if

he is capable of accepting and reporting for suitable work opportunities. OAR 471-030-0036(3)(b). With few exceptions, none of which apply here, an individual is “actively seeking work” only if he conducts five work seeking activities per week. OAR 471-030-0036(5)(a).

Claimant testified during the hearing that, during the weeks at issue, he was not capable of doing any work and did not seek work. Audio recording at ~ 16:40. Because he was not physically capable of performing any work, he cannot be considered “able to work.” Because he was entirely restricted from working and incapable of performing work, no work was suitable for him and he was not capable of accepting and reporting for suitable work opportunities, and therefore cannot be considered “available for work.” Because claimant did not perform any work seeking activities, much less five per week, he cannot be considered “actively seeking work.” For each of those reasons, claimant did not meet the eligibility requirements to receive benefits during any of the weeks at issue, and must be denied benefits from September 11, 2016 through December 3, 2016.

DECISION: Hearing Decision 16-UI-73018 is affirmed.

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

DATE of Service: January 12, 2017

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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