

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1444**

*Affirmed*  
*Ineligible Weeks 41-16 and 42-16*

**PROCEDURAL HISTORY:** On November 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 155913) concluding that claimant was not available for work from October 9 through October 22, 2016 (weeks 41-16 and 42-16). Claimant filed a timely request for hearing. On December 16, 2016, ALJ Shoemake conducted a hearing, and on December 23, 2016, issued Hearing Decision 16-UI-73579, affirming the administrative decision. On December 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 17, 2016, claimant restarted his claim for unemployment. Claimant claimed benefits for weeks 41-16 and 42-16 (October 9 through 22, 2016), the weeks at issue.

(2) Claimant is an electrician and a member of IBEW Local 48, a closed union which does not allow its members to seek non-union work. Claimant's labor market is the Portland metropolitan and Hood River areas, the North Oregon Coast, and Vancouver and Longview, Washington, the normal referral jurisdiction of his union.

(3) From October 10 through 16, 2016, claimant went to California to help his grandmother move. From October 17 through 20, 2016, he went to Seattle to visit family.

(4) During the weeks at issue, claimant never contacted his union about available jobs. Claimant believed it was unnecessary for him to do so because he had a date he was expected to return to work for an employer.

**CONCLUSION AND REASONS:** We agree with ALJ and conclude that claimant was not available for work during the weeks at issue, weeks 41-16 and 42-16.

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 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 physically present in his normal labor market area every day of the week, unless the individual is actively seeking work outside his normal labor market area. *Id.* For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a) (February 23, 2014). An individual who is a member in good standing of a closed union, *i.e.*, one that does not allow its members to seek non-union work, is considered to be actively seeking work if the individual remains in contact with that union, and is “capable of accepting and reporting for work when dispatched by that union.” OAR 471-030-0036(5)(d).

Here, claimant was not available for work during the weeks at issue because he was not physically present in his normal labor market area every day of those weeks, and was not seeking work outside his normal labor market areas. Nor was claimant actively seeking work inside his normal labor market area during the weeks at issue. Claimant was a member in good standing of IBEW Local 48, a closed union. During the weeks at issue, however, he did not remain in contact with the union and, because he was outside his normal labor market area, was not capable of reporting for work if dispatched by his union. Claimant therefore was not available for work, and did not actively seek work, during weeks 41-16 and 42-16, and is ineligible for benefits for those weeks.

**DECISION:** Hearing Decision 16-UI-73579 is affirmed.

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

**DATE of Service: January 19, 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](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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