

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0480**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On March 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the period of February 12, 2017 through March 4, 2017 (decision # 82026). Claimant filed a timely request for hearing. On April 17, 2017, ALJ Lohr conducted a hearing, and on April 18, 2017 issued Hearing Decision 17-UI-81163, concluding claimant was not available for work during the period of February 12, 2017 through April 8, 2017. On April 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**EVIDENTIARY MATTER:** Although the ALJ stated in Hearing Decision 17-UI-81163 that no exhibits were offered or admitted into evidence during the hearing, claimant, in fact, offered some documents that the ALJ marked and admitted into evidence as Exhibit 1. Audio at ~4:50, ~5:20. Hearing Decision 17-UI-81163 is corrected to reflect that Exhibit 1 was admitted into evidence.

**FINDINGS OF FACT:** (1) On February 1, 2017, claimant was separated from her employment as a sales associate with Walmart. For the eleven years that claimant worked for Walmart, she worked part-time.

(2) On February 14, 2017, claimant filed an initial claim for unemployment benefits. That claim was determined valid. Claimant claimed, but was not paid benefits for the weeks of February 12, 2017 through April 8, 2017 (weeks 07-17 through 14-17), the weeks at issue.<sup>1</sup>

(3) During the weeks at issue, claimant looked for work in retail stores, as a sales associate, as a cashier, and as a dental hygienist coordinator. Claimant's labor market was Grants Pass, Oregon and the

<sup>1</sup> We take notice of the fact that claimant was not paid benefits for the weeks at issue, which is found in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

surrounding areas. The days and hours customary for work in retail store were all days between the hours of approximately 8:00 a.m. until 9:00 or 10:00 p.m.

(4) When claimant filed her initial claim for benefits on February 14, 2017, claimant responded to a Department questionnaire which asked, “Are you willing to work full-time and part-time?”, by stating, “No,” and further responding, “Claimant is not willing to work full-time.” Audio at ~9:29. On March 6, 2017, a Department representative spoke by phone with claimant. In that conversation, claimant told the representative that she had worked for Walmart part-time for eleven years, that she “was just doing part-time [looking for part-time work] and “that’s all the work that she wanted.” Audio at ~9:43. Claimant also told the representative that she was willing to work either day or swing shifts, but reiterated that she was only willing to work at a part-time job. Audio at ~10:00.

(5) During the weeks at issue, claimant wanted a job to supplement income she received in Social Security benefits. Audio at ~16:30, ~16:55. To achieve adequate income, claimant needed to work only part-time. *Id.* During the weeks at issue, it was claimant’s “preference” to secure a part-time job. Audio at ~16:30. If prospective employers asked claimant what hours she wanted to work, claimant would tell them that she “preferred” to work part-time. Audio at ~16:11. Claimant did not turn down any jobs during the weeks at issue because they had full-time hours.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks at issue. She is 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 and capable of reporting to all full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that substantially reduce the individual’s opportunities to return to work at the earliest possible time. *Id.* Here, claimant was not paid benefits during the weeks at issue. By logical extension of the ruling in *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976), claimant has the burden to prove by a preponderance of the evidence that she was available for work during the weeks at issue since she did not receive benefits, and would not potentially be required to return any of benefits if she was found to have been ineligible to receive them.

Claimant candidly testified that that she “preferred” to secure only part-time work during the weeks at issue. Audio at ~16:11. However, claimant did not dispute that she flatly stated in her February 14, 2017 application for unemployment benefits that she was not looking for full-time work and was unwilling to work full-time, and that she reiterated this position during her March 6, 2017 conversation with a Department representative. Audio at ~9:29. Claimant made these admittedly unconditional rejections of full-time work before she knew that she was required to be seeking, among other things, *full-time and part-time* work to maintain her eligibility to receive benefits. Audio at ~15:40. That claimant made such statements when she did not know they would make a difference in her eligibility is telling evidence that she did not want, and was not actively seeking full-time work during the weeks at issue. In her testimony at hearing, claimant hedged on the issue of whether she was willing to work full-time by asserting that she had not turned down any offers of full-time work during the weeks at issue.

Audio at ~15:40, ~16:11. However, that claimant had not rejected any full-time jobs as of the time of the hearing does not mean that she was looking for jobs with full-time hours during the weeks at issue or that she would have accepted one if it was offered. Viewing this record as a whole, including particularly claimant's statements of February 14, 2017 and March 6, 2017, it appears most likely that claimant was not willing to work full-time during the weeks at issue. Since claimant did show that she was willing to work full-time during the weeks at issue, claimant did not meet her burden to demonstrate that she was available to work during the weeks at issue.

Claimant was not available for work during weeks 07-17 through 14-17. Claimant is not eligible to receive benefits during those weeks.

**DECISION:** Hearing Decision 17-UI-81163 is affirmed.

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

**DATE of Service:** May 24, 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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