

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0552**

*Reversed*  
*Eligible*

**PROCEDURAL HISTORY:** On January 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 30, 2016 through January 14, 2017 (decision # 102002). Claimant filed a timely request for hearing. On April 14, 2017, ALJ Seideman conducted a hearing, and on April 19, 2017 issued Hearing Decision 17-UI-81349, concluding claimant was not available for work from October 30, 2016 through December 17, 2016. On May 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument and the entire hearing record.

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for unemployment insurance benefits on October 14, 2016 and filed weekly claims for benefits from October 30 to December 17, 2016 (weeks 44-16 through 50-16), the weeks at issue.<sup>1</sup> The Department did not pay claimant benefits for those weeks.<sup>2</sup>

(2) During the weeks at issue, claimant was seeking work as a cook. Claimant's labor market was Beaverton, Tigard, Lake Oswego, and Portland, Oregon. In claimant's labor market, the customary work days and hours for a cook were all days, day and swing shifts.

<sup>1</sup> We agree with the ALJ that claimant was not ineligible for benefits from December 18, 2016 through January 14, 2017.

<sup>2</sup> EAB takes notice of claimant's payment history, which is contained 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 in writing, 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.

(3) Since 2014, claimant had completed about six terms at Portland Community College (PCC). He was not in a degree program at PCC, but obtaining credits to transfer to a degree program at another school. Claimant attended school during the weeks at issue, with his classes ending on December 12, 2016. Claimant had classes scheduled on Mondays from 9:30 a.m. to 2:50 p.m., Tuesdays and Thursdays from 11:00 a.m. to 12:50 p.m., Wednesday from 9:30 a.m. to 2:50 p.m. and from 6:30 p.m. to 8:30 p.m.

(4) During the spring term of 2016, when claimant's work schedule conflicted with his class schedule, claimant withdrew from school to be able to work any days and hours offered by his employer. During October 2016, claimant missed classes when he was scheduled to work.

(5) Claimant received grant money during the weeks at issue. Had he withdrawn from school, he would not have lost the grant money, but it would have affected his ability to apply for financial aid the subsequent term.

(6) On the Department's "student eligibility questionnaire" that claimant completed when he filed his initial claim for benefits, he misread a question and responded that he would not accept work when he was attending school. Claimant later explained verbally to a Department representative that he was willing to miss classes or withdraw from school to work. Claimant misunderstood another question that asked him what days he was willing to work and responded that he was willing to work from Wednesday through Saturday. Claimant misunderstood the question to be asking him what days he normally worked. When speaking to employers regarding potential hire, claimant told them the schedule he normally worked in the past due to school but also told them he was available all days and all hours.

**CONCLUSIONS AND REASONS:** We disagree with the Department and the ALJ. Claimant was available for work from October 30, 2016 to December 17, 2016 (weeks 44-16 through 50-16).

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 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.*

In Hearing Decision 17-UI-81349, the ALJ implicitly found as fact that claimant was not available for all suitable work opportunities during the weeks at issue because he stated on his unemployment insurance benefits application form that he was not willing to stop attending classes to work, and that he was willing to work Wednesday through Saturday, and thus substantially reduced his opportunities to return to work as soon as possible.<sup>3</sup> We disagree because the preponderance of the evidence at hearing does not support the ALJ's conclusions.

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<sup>3</sup> Hearing Decision 17-UI-81349 at 2, 3.

Although claimant told potential employers about the schedule he had normally worked while attending school, he did not ask employers to accommodate his work schedule and told them he was willing to work “any hours” and drop classes to work. Audio Record at 13:05 to 13:39. Claimant also testified that he misunderstood the question on the Department’s “school questionnaire” to which he responded that he would not accept work while attending school, and that he intended to say that he would not quit school for work unless it was necessary to do so for him to be available for work. Audio Record at 15:52 to 16:12. He also misunderstood the Department’s question about what days he was willing to work as asking, not what days he was willing to work, but what days he typically worked. Audio Record at 16:46 to 17:07. Claimant testified that he was willing to miss classes during the weeks at issue to report to work. We find claimant’s testimony credible because he had withdrawn from classes during the spring term of 2016 to work and had missed classes in October 2016 to work when work conflicted with his class schedule. Moreover, it is plausible claimant would miss school for work because he was not in a degree program, and his school attendance did not permanently affect his ability to qualify for financial aid.

Claimant provided credible evidence supporting his statements that he would either miss classes for work, or drop school for work, if offered work that conflicted with his school schedule. On this record, he was willing to work all the days and hours customary for the types of work he sought, and his school attendance was not a condition that substantially reduced his opportunities to return to work at the earliest possible time. Claimant was, therefore, available for work from October 30, 2016 to December 17, 2016 (weeks 44-16 through 50-16) despite his school attendance. He is not ineligible for benefits on that basis.

**DECISION:** Hearing Decision 17-UI-81349 is set aside, as outlined above.<sup>4</sup>

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

**DATE of Service:** May 30, 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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<sup>4</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.