

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0565

Modified
Ineligible Weeks 44-16 through 46-16
Eligible Week 47-16

PROCEDURAL HISTORY: On December 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 102856) concluding that claimant was not available for work from October 30 through November 26, 2016 (weeks 44-16 through 47-16). On January 11, 2016, decision # 102856 became final without a request for hearing having been filed. On January 13, 2017 claimant filed a late request for hearing. On January 18, 2017, ALJ Kangas issued Hearing Decision 17-UI-74870, dismissing claimant's late hearing request, subject to claimant's right to renew the request by timely responding to an appellant questionnaire. Claimant timely responded to the appellant questionnaire. By letter dated February 2, 2017, the Office of Administrative Hearings (OAH) cancelled Hearing Decision 17-UI-74870. On March 2, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-78039, dismissing claimant's late hearing request. On March 22, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

On March 24, 2017, EAB issued Appeals Board Decision 2017-EAB-0351, allowing claimant's late request for hearing and remanding the matter to OAH for a hearing on the merits of claimant's hearing request. On April 11, 2017, ALJ Frank conducted a hearing, and on April 19, 2017, issued Hearing Decision 17-UI-81370, affirming decision # 102856. On May 9, 2017, claimant filed an application for review of Hearing Decision 17-UI-81370 with EAB.

FINDINGS OF FACT: (1) On October 30, 2016, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks 44-16 through 47-16 (October 30 through November 26, 2016), the weeks at issue. The Department did not pay benefits to claimant for any of those weeks.

(2) When claimant filed her initial claim for benefits, she was asked if there was any reason she could not immediately begin to work full time. Claimant responded that she was unable to work full time because she was in a domestic violence situation and was working on a safety plan for her and her family.

(3) When claimant filed her claim for benefits for week 44-16 (October 30 through November 5, 2016) she reported that she was in a domestic violence situation and on a leave of absence from McMenamín's Oregon City bar and restaurant, where she had been working as a kitchen manager. Claimant reported that her only work search activity was to contact McMenamín's Oregon City.

(4) When claimant filed her claim for benefits for week 45-16 (November 6 through 12, 2016) she again reported that she was in a domestic violence situation. Claimant reported that her work search activities were to contact various McMenamín's locations.

(5) When claimant filed her claim for benefits for week 46-16 (November 13 through 19, 2016), she reported that her work search activities consisted of contacting two new employers, applying for jobs online at a Department Work Source office, and meeting with a domestic violence counselor.

(6) When claimant filed her claim for benefits for week 47-16 (November 20 through 26, 2016), she reported that she conducted five work seeking activities, at least two of which were contacting employers that might hire her as cook or kitchen manager.

CONCLUSION AND REASONS: We conclude that claimant was not available for work during weeks 44-16 through 46-16, but was available for work during week 47-16.

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 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.* 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). With limited exceptions individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.*

At the hearing, claimant candidly admitted that she was not willing to work or capable of working during most of the weeks at issue because she was involved in a situation of domestic violence, and was attempting to secure a safe environment for her and her family. Claimant's limited work search activities during weeks 44-16 through 46-16 corroborate her assertion that she was unwilling or unable to work during those weeks. Claimant also testified, however, that after her personal situation stabilized in mid-November, she was willing to work and capable of reporting for work opportunities as a cook or kitchen manager. Audio recording at 19:26. The record shows that after meeting with a domestic violence counselor during week 46-16, claimant conducted a work search considered adequate by the Department during week 47-16. Audio recording at 13:09. Claimant's active work search demonstrates her willingness to work during this week. We therefore conclude that claimant was not available for work and ineligible for benefits for weeks 44-16 through 46-16, but was available for work and eligible for benefits for week 47-16.

DECISION: Hearing Decision 17-UI-81370 is modified, as outlined above.¹

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

DATE of Service: June 1, 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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¹ This decision modifies 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.