

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0602

Affirmed
Request to Reopen Granted
Ineligible Weeks 07-17 through 17-17

PROCEDURAL HISTORY: On March 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 112817) concluding that claimant was not available for work from February 12 through 18, 2017 (week 07-17). Claimant filed a timely request for hearing. On March 22, 2017, the Office of Administrative Hearings issued notice of a hearing scheduled for April 4, 2017. On April 4, 2017, ALJ Wyatt issued Hearing Decision 17-UI-80266, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On May 3, 2017, ALJ Snyder conducted a hearing, and on May 10, 2017, issued Hearing Decision 17-UI-83058, granting claimant's request to reopen and concluding that he was not available for work from February 12 through April 29, 2017 (weeks 07-7 through 17-17). On May 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion granting claimant's request to reopen is **adopted**.

FINDINGS OF FACT: (1) On February 11, 2017, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits from February 12 through April 29, 2017 (weeks 07-17 through 17-17), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a bartender. Claimant's labor market was the Eugene-Springfield, Oregon area. Work as a bartender is customarily performed all days, day and closing shifts.

(3) During the weeks at issue, claimant was enrolled in a Masters of Education program at Northwest Christian College; claimant was in the first year of a two year program. Also during the weeks at issue, claimant had a class scheduled on Mondays from 6 p.m. to 9 p.m. The class was a required part of claimant's educational program and was not offered at any other time. Claimant had also scheduled himself to participate in practicums on Wednesdays from 9 a.m. to 11:30 a.m., and on Thursdays from

12 p.m. to 2:30 p.m. These practicums could be rescheduled to daytime hours, Monday through Friday, if necessary.

(4) During the weeks at issue, claimant was unwilling to drop his Monday night class to accept suitable work. Instead, claimant would have asked a prospective employer to schedule work hours that would allow him to attend the class. Based on his many years of experience as a bartender, claimant believed employers would be willing to make this type of accommodation.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant was not available for work during weeks 07-17 through 17-17.

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 is the requirement that the individual be “[w]illing to work full time, part time and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought...” OAR 471-030-0036(3)(a).

During the weeks at issue, claimant sought work as a bartender, work that was customarily performed during days and hours that conflicted with his scheduled Monday evening class. At the hearing, claimant candidly admitted that he would not have dropped the class if offered a job with work hours that conflicted with his class hours. Instead, he would have asked a prospective employer for a work schedule that accommodated his class schedule. Because claimant was unwilling to accept work opportunities “during all of the usual hours and days of the week customary” for the work he sought, he was unavailable for work during the weeks at issue. Claimant is therefore ineligible to receive benefits during weeks 07-17 through 17-17 (February 12 through April 29, 2017).

DECISION: Hearing Decision 17-UI-83058 is affirmed.

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

DATE of Service: June 6, 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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