

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0700**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On April 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work (decision # 150347). Claimant filed a timely request for hearing. On May 30, 2017, ALJ Lohr conducted a hearing and issued Hearing Decision 17-UI-84472, affirming the Department's decision. On June 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the hearing record and claimant's argument to the extent it was based on the hearing record.

**FINDINGS OF FACT:** (1) On October 5, 2016, claimant filed an initial claim for unemployment insurance benefits. The claim was determined valid. Claimant claimed, but was not paid, benefits for the weeks of February 26, 2017 through April 8, 2017 (weeks 9-17 through 14-17), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a regular and remote customer service representative, remote scheduler, product merchandiser, hotel front desk clerk, receptionist, and a medical and administrative assistant. Claimant's labor market was Grants Pass, Oregon and the surrounding area. In claimant's labor market, the customary hours and days for remote customer service, scheduler, product merchandiser, and front desk clerk work were all shifts on all days. Regular customer service, receptionist, medical and administrative assistant work was performed during day shifts on all days in claimant's labor market.

(3) Claimant was the legal guardian of her granddaughter. From March 3, 2017 through April 8, 2017, claimant did not have childcare for her granddaughter every Friday morning through Saturday evening because her husband, who would normally provide childcare, was out of town at those times until June 2017. Claimant reported this information to the Department on April 7, 2017.

(4) On March 9, 2017, a grocery store offered claimant a part time job and asked claimant what days claimant wanted to work and claimant told her "Monday through Thursday." Claimant began work for that employer on April 3, 2017.

**CONCLUSIONS AND REASONS:** Claimant was not available during the weeks of February 26, 2017 through April 8, 2017 (weeks 9-17 through 14-17).

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 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.* An individual who is a parent of a child or children under the age of 13 and who is unable to work a particular shift due to child care needs, is considered available for work if the work the individual seeks is performed during other shifts in the labor market and the individual is willing and capable of working during those other shifts. OAR 471-030-0052(4).

At hearing, claimant did not contend that childcare needs prevented her from regularly working during one particular shift. Accordingly, the availability exception for individuals who cannot work one shift because of childcare responsibilities does not apply to claimant’s situation.

Claimant reported to the Department that she did not have childcare from March 3 until June 2017 from Friday morning to Saturday evening. At hearing, however, she contended that she was always available for work, but would have to find childcare for her granddaughter “if an opportunity came upon [her].” Audio Record at 23:24 to 23:55. The record contains no information to show that claimant had a childcare provider ready and willing to care for her granddaughter on Fridays and Saturdays on a regular basis until her husband was able to do so in June 2017. Moreover, claimant showed an unwillingness to work on days other than Monday through Thursday by telling her employer she preferred to work those days.

Where, as here, claimant was not paid benefits during the weeks at issue, claimant carries the burden to show by a preponderance of the evidence that she was entitled to receive benefits or that she was available for work. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The preponderance of the reliable evidence in this case shows that claimant did not have childcare for Fridays and Saturdays during the weeks at issue, and that she was not available for full time work due to lack of childcare. Consequently, claimant did not meet her burden to establish she was available for work during all of the weeks at issue.

OAR 471-030-0036(4) provides a limited exception to the requirement that a claimant must be available for work. That exception provides that a claimant who is not available during a “particular shift” due to lack of childcare for a minor child remains eligible to receive unemployment insurance benefits if the work that the claimant sought is customarily performed during other shifts and the claimant is capable of and willing to work during those other shifts. Claimant sought some work that was customarily performed only during the day shift. Because the work that claimant sought was not customarily performed during any other shifts, the exception to the availability requirements provided under OAR 471-030-0036(4) does not apply to claimant.

Claimant did not show she was available for work during the weeks of February 26, 2017 through April 8, 2017 (weeks 9-17 through 14-17). Claimant is ineligible to receive unemployment benefits during those weeks.

**DECISION:** Hearing Decision 17-UI-84472 is affirmed.

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

**DATE of Service:** July 3, 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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