

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0882

Affirmed
Ineligible Week 20-17

PROCEDURAL HISTORY: On June 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week May 14 through May 20, 2017 (decision # 102858). Claimant filed a timely request for hearing. On July 12, 2017, ALJ Micheletti conducted a hearing, and on July 19, 2017, issued Hearing Decision 17-UI-88375, affirming the Department's decision. On July 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on May 19, 2017. Claimant claimed benefits for the week including May 14 through May 20, 2017 (week 20-17), the week at issue. The Department did not pay claimant benefits for that week.

(2) Claimant's customary work was customer service representative. In claimant's labor market, the usual hours and days customary for work as a customer service representative were all days and all shifts.

(3) On May 4, 2017, claimant was arrested and then incarcerated at the Klamath County Jail. Claimant was not released from jail until May 17, 2017. Claimant was not free to leave, and therefore was not capable of accepting and reporting for any work opportunities within his labor market, from May 4 through May 17, 2017.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. Claimant was not available for work during the week at issue.

To be eligible to receive benefits, unemployed individuals must be 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 capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities. *Id.*

Where, as here, the Department does not pay claimant benefits, claimant has the burden to establish that he is eligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant did not meet that burden. At hearing, claimant admitted that he was not capable of reporting for any work opportunities from May 4 through May 17, 2017 because he was in jail. Audio Record ~ 9:45 to 11:30. Therefore, because claimant was not capable of accepting and reporting for all suitable work opportunities within his labor market during the entire week at issue, he was not available for work. Accordingly, he is ineligible for benefits for week 20-17.

DECISION: Hearing Decision 17-UI-88375 is affirmed.

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

DATE of Service: August 17, 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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