

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0940**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On July 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of June 25, 2017 through July 8, 2017 (decision # 82743). Claimant filed a timely request for hearing. On August 3, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-89569, modifying the Department's decision and concluding claimant was not available for work during the weeks of June 25, 2017 through July 29, 2017. On August 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) In January 2017, claimant enrolled as a student at Mount Hood Community College (MHCC) majoring in business studies. Claimant attended classes during winter term 2017.

(2) On June 25, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits during the weeks of June 25, 2017 through July 29, 2017 (weeks 26-17 through 30-17), the weeks at issue.

(3) During the weeks at issue, claimant was seeking work as a kitchen manager or a restaurant worker. The days and hours customary for the type of work claimant was seeking in her labor market were all days, 6:00 a.m. through midnight.

(4) Around the end of June 2017, claimant enrolled for summer term at MHCC. Summer term ended around late August 2017. The cost of claimant's tuition for summer term was \$3,500, for which claimant received financial assistance. During the weeks at issue, claimant was attending in-person classes on the MHCC campus as follows: algebra - from 7:30 a.m. until 9:50 a.m. on Mondays through Thursdays; introduction to business - from 10:00 a.m. until 12:00 p.m. on Mondays and Wednesdays; and writing - from 2:00 p.m. until 3:00 p.m. on Mondays and Wednesdays.

(5) During the weeks at issue, claimant "reserved" Tuesdays and Wednesdays exclusively for school and was unwilling to accept any job that required him to work on either of those two days. Audio at ~10:51, 15:45. While claimant might be willing to re-arrange his class schedule around a work schedule that

conflicted with it, he would do so only if the time in which he was allowed to change classes and pick up new classes had not yet expired at MHCC. Audio at ~16:00. Claimant was unwilling to completely drop all classes in order to accommodate a work schedule that conflicted with his class schedule. Audio at ~11:50, ~16:00.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks at issue and is not eligible to receive benefits for those weeks.

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 during all of the usual days and hours customary for the type of work the individual is seeking, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.*

It was apparent from claimant’s testimony at hearing that his schooling was extremely important to him. Claimant’s testimony was clear that he was unwilling to work at any job he was offered during the weeks at issue if that job required him to work on Tuesdays or Wednesdays, since those were his heaviest class days and he “reserved” those days exclusively for school. Audio at ~10:51, ~15:19. Claimant’s testimony was also clear that, if the time had passed for him to change and pick up new classes, he was unwilling to drop school completely to accommodate a job schedule that conflicted with his class schedule during the weeks at issue since it would be “foolish of me to drop classes and fail.” Audio at ~16:00. Because claimant’s classes took place during some of the days and hours customary for the type of work claimant was seeking, claimant’s testimony demonstrates that he was not willing to report for all work opportunities during all of the usual days and hours customary for that work during the weeks at issue. In addition, claimant’s unwillingness to take a job that required him to work on Tuesdays or Wednesdays, when it was customary to work those days in the jobs that he was seeking, and his unwillingness to drop classes for work if the time for changing dropping classes without a grade penalty and had passed at MHCC, also show that he was imposing conditions on the jobs he would accept that substantially reduced his opportunities to return to work at the earliest possible time. For these reasons, claimant was not available for work during the weeks at issue.

**DECISION:** Hearing Decision 17-UI-89569 is affirmed.

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

**DATE of Service:** August 28, 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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