

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0956

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 4, 2017 through July 8, 2017 (decision # 121013). Claimant filed a timely request for hearing. On August 2, 2017, ALJ Meerdink conducted a hearing, and on August 3, 2017 issued Hearing Decision 17-UI-89563, concluding claimant was not available for work during the period of June 4, 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) Sometime before June 4, 2017, claimant worked for approximately two weeks at Macy's in Clackamas, Oregon. Claimant's shift at Macy's was from 6:00 a.m. until 3:00 p.m. Claimant did not have an automobile and relied on public transportation to commute to work. The earliest claimant was able to report to Macy's using public transportation was between 8:30 and 9:00 a.m. Claimant made short-term arrangements for a friend to drive him to Macy's so that he would arrive by 6:00 a.m. Claimant's arrangements with the friend ended and claimant separated from employment with Macy's.

(2) On June 4, 2017, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for the weeks of June 4, 2017 through July 29, 2017 (week 23-17 through 30-17), the weeks at issue.

(3) During the weeks at issue, claimant's labor market was Clackamas, Gladstone, Lake Oswego, Milwaukie, Oregon City, Southeast and Southwest Portland and Tualatin, Oregon. During the weeks at issue, claimant was seeking work in retail merchandising. The customary days and hours for working in retail merchandising in claimant's labor market was all days, 6:00 a.m. through 11:00 p.m.

(4) During the weeks at issue, claimant still did not have an automobile and relied on public transportation when required to travel. Using public transportation did not allow claimant to arrive at all locations in his labor market by 6:00 a.m. each day. Claimant did not have family or friends he could rely on for transportation, and he did not use any transportation options other than public transportation.

Claimant would not accept jobs with work schedules that began earlier than he was able to arrive by public transportation.

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.*

Claimant testified that had no realistic options for work related travel or commuting to work other than public transportation during the weeks at issue. Audio at ~12:36, ~13:20. Claimant readily agreed that since he used public transportation to travel to work opportunities during the weeks at issue, he was unable to report for jobs and job opportunities in some parts of his labor market if they started at 6:00 a.m. and in some other parts if they started any earlier than 8:30 or 9:00 a.m. Audio at ~10:35, ~11:48, ~13:48. Because claimant was seeking work that was customarily performed beginning at 6:00 a.m., his transportation limitations resulted in him not being capable of reporting for all potential retail merchandising work opportunities throughout his labor market. Accordingly, claimant was not available for work during the weeks at issue.

DECISION: Hearing Decision 17-UI-89563 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. 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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