

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0961

Affirmed
Ineligible Weeks 15-17 through 16-17 and 18-17 through 19-17

PROCEDURAL HISTORY: On June 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks including April 9 through April 22 and April 30 through May 13, 2017 (decision # 142634). Claimant filed a timely request for hearing. On July 18, 2017, ALJ Lohr conducted a hearing, and on July 21, 2017, issued Hearing Decision 17-UI-88610, affirming the Department's decision. On August 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB that presented facts not offered into evidence during the hearing. Claimant did not explain why she was unable to present this information during the hearing, or otherwise show as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. Accordingly, EAB considered only information received into evidence at the hearing when reaching this decision.¹

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on November 17, 2016. Claimant claimed benefits for the weeks including April 9 through April 22 and April 30 through May 13, 2017 (weeks 15-17 through 16-17 and 18-17 through 19-17), the weeks at issue. The Department paid claimant benefits for those weeks.

(2) During the weeks at issue, claimant worked for ShelterCare as an on call relief counselor. Claimant's labor market was the Eugene and Springfield area. In claimant's labor market, the usual hours and days customary for work as a relief counselor were all days and all shifts.

¹ Even if EAB had considered claimant's new information, the outcome would have remained the same. *See Doctor v. Employment Division*, 76 Or App 650, rev den 300 Or 704 (1985) ("If the legislature had wished to require a good cause exemption under ORS 657.155(1)(c), it could have included it in the statute."). Absent such an exception, claimant either meets the eligibility requirements or she does not.

(3) When claimant was hired, she notified the employer that she preferred to not work after 8:00 p.m. and filled out an availability form that stated that she was available from 6:00 a.m. to 8:00 p.m.

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

To be eligible to receive benefits, unemployed individuals must be available for 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 and 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 initially paid claimant benefits before issuing its denial, the Department has the burden to establish that she was ineligible for those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department met its burden. At hearing, the Department established that the employer reported that claimant never applied for full time work opportunities it had available and that claimant had indicated that she only wanted to work day and swing shifts. Audio Record ~ 16:00 to 22:00. At hearing, claimant admitted that she told the employer at hire that she was not available for on call work opportunities outside of 6:00 a.m. to 8:00 p.m. Audio Record ~ 24:30 to 25:30; 29:30 to 30:30. Because claimant limited her availability for on call work to certain hours, she demonstrated she was not willing to accept and report for work during all the customary days and hours of the type of work she sought. Therefore, she was not available for work during the weeks at issue. Accordingly, she is ineligible for benefits for weeks 15-17 through 16-17 and 18-17 through 19-17.

DECISION: Hearing Decision 17-UI-88610 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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