

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1013

Affirmed
Ineligible

PROCEDURAL HISTORY: On July 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from June 18, 2017 through July 15, 2017 (decision # 160229). Claimant filed a timely request for hearing. On August 23, 2017, ALJ Seideman conducted a hearing at which the employer did not appear, and on August 24, 2017 issued Hearing Decision 17-UI-91132, modifying the Department's decision and concluding claimant was not available for work from June 18, 2017 through August 19, 2017. On August 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant to claimant's availability for work, which was the issue before EAB.

FINDINGS OF FACT: (1) On May 6, 2017, claimant filed an initial claim for benefits. That claim was determined valid. Claimant claim claimed benefits for the weeks of June 18, 2017 through August 19, 2017 (weeks 25-17 through 33-17), the weeks at issue.

(2) During the weeks at issue, claimant sought work as a customer service representative in a call center. Claimant's labor market was the Portland metropolitan area. The days and hours customary for a call center representative in claimant's labor market were all days, day and swing shifts.

(3) During the weeks at issue, claimant relied on public transportation to commute to job opportunities. Claimant did not have an automobile and he had no friends or family he could rely on to provide work-related transportation. Claimant could not afford car services for transportation, including taxis and Uber or Lyft cars.

(4) During the weeks at issue, public transportation was generally available to provide transportation to claimant in the Portland area from approximately 5:00 a.m. until midnight or 1:00 a.m., depending on the specific location in the Portland area to which or from which claimant would need to travel. Some areas of Portland were not served by public transportation as early as 5:00 a.m. or as late as midnight.

(5) During the weeks at issue, claimant was employed by a staffing agency, Ellis Staffing Services, Inc. Once during the weeks at issue, the employer offered claimant an assignment in the Portland area working swing shift at a warehouse. The employer representative who contacted claimant about the assignment told claimant it was in Portland and the shift for the assignment ended at midnight. Claimant asked the representative the exact location in Portland of the workplace for that assignment, and the representative told him the street on which the workplace was situated, but was unable to provide information about the nearest cross street. Absent information about the cross street, claimant did not accept the offered assignment because he was unable to confirm that the workplace would be served by public transportation as late as the midnight end of the shift and that he would have transportation to return home.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue and was 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 during all of the usual hours and days of the week customary for the work being sought, and capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought. *Id.*

Claimant did not dispute that swing shifts ended as late as midnight or 1:00 a.m. in his labor market of Portland, Oregon. He also did not dispute that he was solely reliant on public transportation to commute to and from work opportunities in his labor market. By claimant’s need to know the exact location of the warehouse work assignment to confirm that public transportation would be available to him to commute home after the midnight end of a swing shift, it appears that public transportation was likely not available for the locations of all swing shift work opportunities that would arise in claimant’s labor market. As well, claimant’s uncertainty about the hours that public transportation served certain potential work locations in the Portland area, and his need to verify the availability of transportation to and from those areas before considering whether an offered job was feasible, strongly indicates that his willingness to accept a work opportunity was contingent on the extent to which potential work locations were served by public transportation at times that conformed to the scheduled hours for that job. Based on these factors, it appears most likely that claimant’s exclusive reliance on public transportation, which was not available to transport him from work during all of the hours that a swing shift might end, left him either incapable of reporting for all suitable work opportunities within his labor market, or at least unwilling to work during all of the usual hours and days of the week customary for the work he sought as a call center representative.

Claimant was not available for work during the weeks at issue. He is not eligible to receive benefits for those weeks.

DECISION: Hearing Decision 17-UI-91132 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 27, 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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