

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1046

Modified

Ineligible Weeks 11-17 through 17-17, 19-17 and 26-17

Eligible Weeks 18-17, 21-17, 22-17, 24-17, 25-16, 28-17 and 29-17

PROCEDURAL HISTORY: On April 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from March 12 through April 22, 2017 (weeks 11-17 through 16-17), and therefore denied benefits for that period until the reason for the denial had ended (decision # 103717). Claimant filed a timely request for hearing. On August 4, 2017, ALJ Micheletti conducted a hearing, and on August 14, 2017 issued Hearing Decision 17-UI-90342. Hearing Decision 17-UI-90342 concluded that claimant was not available for work during weeks 11-17 through 16-17 or the weeks from April 23 through 29, 2017 (week 17-17), May 7 through 13, 2017 (week 19-17) and June 18 through 24, 2017 (week 25-17). Hearing Decision 17-UI-90342 also concluded that claimant was available for work for the weeks of April 30 through May 6, 2017 (week 18-17), May 21 through June 3, 2017 (weeks 21-17 and 22-17), June 11 through 17, 2017 (week 24-17), June 25 through July 1, 2017 (week 26-17) and July 9 through 22, 2017 (weeks 28-17 and 29-17). On September 1, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-90342 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant was not available for work during, and therefore is ineligible for benefits for, weeks 11-17 through 17-17 and week 19-17 are **adopted**. The ALJ's findings and analysis with respect to the conclusion and that claimant was available for work during, and therefore is eligible for benefits for, weeks 18-17, 21-17, 22-17, 24-17, 28-17 and 29-17 also are **adopted**. The remainder of this decision addresses whether claimant was available for work during weeks 25-16 and 26-17, and is eligible for benefits for those two weeks.

FINDINGS OF FACT: (1) Claimant claimed benefits for 25-16 and 26-16, the weeks at issue.

(2) During the weeks at issue, claimant sought work as a caregiver. The usual hours and days of the week customary for caregiver work included any shift, any day of the week.

(3) Prior to week 25-17, claimant informed her employer, New Horizons Adult Care, that she generally was willing to work any shift, any day of the week. During week 25-17, claimant worked for the employer on June 18, 2017 and from June 20 through 24, 2017. On June 23, 2017, the employer offered claimant work on June 26, 2017, which was during week 26-17. Claimant informed the employer that she was unwilling to work on June 26.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant was available for work during week 25-17, and not available for work during week 26-17. Claimant therefore is eligible for benefits for week 25-17, and is not eligible for benefits for week 26-17.

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. *Id.*

In Hearing Decision 17-UI-90342, the ALJ found as fact that on April 26, 2017, claimant informed the employer she was generally willing to work any shift, any day of the week, but that claimant refused a work opportunity with the employer on June 23, 2017.¹ Based on those findings, the ALJ concluded that although claimant generally was available for work after April 26, 2017, including during week 26-17, she refused a work opportunity with the employer during week 25-17, which demonstrated that she was not available for work during that week.² We agree with the ALJ that the record shows claimant generally was available for work after April 26, 2017. However, the record shows that claimant refused an opportunity to work for the employer on June 26, 2016, and not June 23, 2016. Transcript at 13. Claimant therefore was unwilling to work during all of the usual hours and days of the week customary for the caregiver work she sought during week 26-17, and not week 25-17.

We therefore disagree with the ALJ and conclude that claimant was available for work during week 25-17 and not available for work during week 26-17. Claimant therefore is eligible for benefits for week 25-17 and is not eligible for benefits for week 26-17.

DECISION: Hearing Decision 17-UI-90342 is modified, as outlined above.

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

DATE of Service: September 26, 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.

¹ Hearing Decision 17-UI-90342 at 2.

² *Id.* at 4.

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