

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1074

Affirmed
Ineligible – Weeks 28-17 through 34-17

PROCEDURAL HISTORY: On July 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from July 9, 2017 through July 22, 2017 (decision # 153652). Claimant filed a timely request for hearing. On September 5, 2017, ALJ Seideman conducted a hearing, and on September 7, 2017, issued Hearing Decision 17-UI-92093, concluding claimant was not available for work from July 9, 2017 through August 26, 2017. On September 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) During the week including June 30, 2017, claimant was separated from her job as an accounts manager for a realty company.

(2) On July 9, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant filed weekly claims for, but was not paid, benefits for the weeks including July 9, 2017 through August 26, 2017 (weeks 28-17 through 34-17), the weeks at issue.

(3) During the weeks at issue, claimant sought work as an administrative employee and accounts manager. Claimant's labor market included Portland, Oregon and the surrounding areas. In claimant's labor market, the customary days and hours for the work claimant sought were Monday through Friday, day shift.

(4) On July 25, 2017, claimant was interviewed by a Department representative. During the interview, claimant related that in her previous job, the employer only had full-time positions and “[she was] not available for that” because she was the foster parent for a two-year old special needs niece that required that claimant attend several appointments per week during work hours. Audio Record ~ 14:15 to 17:45. She also related that, at least until the need for the appointments stopped, she probably would not be able to maintain full-time employment for a prospective employer which was not flexible regarding work hours due to her foster parent obligations.

CONCLUSIONS AND REASONS: We agree with 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). To be considered “available for work” for purposes of ORS 657.155(1)(c), a claimant must be willing to accept full time, part time and temporary work opportunities during all of the usual hours and days of the week customary for the work being sought, be capable of accepting and reporting for any suitable work opportunities within his or her labor market and refrain from imposing conditions that substantially reduce his or her opportunities to return to work at the earliest possible time. OAR 471-030-0036(3) (February 23, 2014). Here, the Department did not pay claimant benefits for any of the weeks at issue. Therefore, claimant had the burden to establish by a preponderance of the evidence that benefits should have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

At hearing, claimant did not dispute that she made the statements about her niece to the Department representative, but explained that she had just experienced a recent death in the family and was upset with the interviewer’s attitude, both of which influenced her responses to the questions asked. She also explained that she would have accepted full-time work and was confident that she would have been able to negotiate a modification of hours with a prospective employer, the service provider for her foster child, or both to enable her to perform the job and meet her foster parent obligations. However, we agree with the ALJ that in making her availability for work contingent upon the success of such negotiations, claimant imposed a condition that substantially limited her opportunity to return to work at the earliest possible time. Hearing Decision 17-UI-92093 at 3.¹

Accordingly, for purposes of determining claimant’s eligibility for unemployment insurance benefits for the weeks including July 9 through August 26, 2017, claimant failed to meet her burden to show that she was available for work. She is, therefore, ineligible to receive unemployment insurance benefits for those weeks.

DECISION: Hearing Decision 17-UI-92093 is affirmed.

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

¹ OAR 471-030-0036(4), provides:

(4) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

On this record, this provision does not apply because the work claimant sought customarily was performed only during the day shift in her labor market area.

DATE of Service: October 6, 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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