

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1142

Affirmed
Ineligible

PROCEDURAL HISTORY: On August 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from July 9 through 29, 2017 (decision # 103721). Claimant filed a timely request for hearing. On August 30, 2017, ALJ Janzen conducted a hearing, and on August 31, 2017 issued Hearing Decision 17-UI-91608, affirming the Department's decision. On September 18, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from July 9 through 29, 2017 (weeks 28-17 through 30-17), the weeks at issue. The Department did not pay claimant benefits for those weeks.

(2) Claimant's normal labor market area was Keizer and Salem, Oregon. She worked for her regular employer in Salem on Friday, July 7, 2017. On Monday, July 10, 2017, she traveled to Murrieta, California, which was far outside her labor market area. Claimant was due back at work for her regular employer the first week of August 2017. She returned from Murrieta to her normal labor market area in the evening on Thursday, July 27, 2017, and returned to work for her regular employer on Monday, July 31, 2017.

(3) Claimant traveled to Murrieta to care for her mother, who was terminally ill. Claimant maintained contact with her regular employer while in Murrieta and could have returned to work on one day's notice. However, claimant did not search for work in the Murrieta labor market area and was not interested in working in that area.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant was not available for work during the weeks at issue, and therefore is ineligible for 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).

For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a) (February 23, 2014). With limited exceptions individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* An individual who is on a temporary layoff for four weeks or less with the individual's regular employer and had, as of the layoff date, been given a date to return to work, is considered to have actively sought work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the layoff occurred. OAR 471-030-0036(5)(b)(A).

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)(b). Among those requirements are that the individual be capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought. *Id.* ORS 657.155(2)(a) provides that an individual who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work. The presumption may be overcome if the individual establishes that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies, or was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market. ORS 657.155(2)(b). Thus, to be considered available for work, such an individual must be physically present in her normal labor market area every day of the week unless the individual is actively seeking work outside his or her normal labor market area, or the individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence. OAR 471-030-0036(3)(d).

In the present case, the issue is whether claimant was available for work during the three weeks at issue, and it is undisputed that she was outside of her normal labor market area for the major portion of all three weeks, and therefore is presumed to be unavailable for work. At hearing, however, claimant essentially argued that, under OAR 471-030-0036(5)(b)(A), she actively sought work during the weeks at issue by remaining contact with and being capable of accepting and reporting for any suitable work with her regular employer, and that she therefore was available for work under ORS 657.155(2)(b) and OAR 471-030-0036(3)(d). According to claimant, she therefore is eligible for benefits for the weeks at issue. We disagree.

For claimant to overcome the presumption that she was unavailable for work during the weeks at issue, ORS 657.155(2)(b) required her to establish she conducted a bona fide search for work and was reasonably accessible to suitable work in the Murrieta labor market area, which is where she spent the major portion of all three weeks, and not that she conducted a bona fide search for work and was reasonably accessible to suitable work in her normal labor market area. Thus, to be considered available for work during the weeks at issue under OAR 471-030-0036(3)(d), claimant was required to show that she was actively seeking work in the Murrieta labor market area, and not that she was actively seeking work in her normal labor market area. It is undisputed that claimant did not seek work in the Murrieta labor market area, and that she was not interested in working in that area. She therefore was not available for work during the weeks at issue, and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 17-UI-91608 is affirmed.

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

DATE of Service: October 16, 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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