

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1150

Affirmed
Weeks 29-17 Through 33-17 - Ineligible
Week 35-17 - Eligible

PROCEDURAL HISTORY: On August 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks of July 16, 2017 through August 12, 2017 (decision # 72147). Claimant filed a timely request for hearing. On September 13, 2017, ALJ S. Lee conducted a hearing, and on September 15, 2017 issued Hearing Decision 17-UI-92681, concluding claimant was not available for work during the weeks of July 16, 2017 through August 19, 2017 and was available for work during the week of August 27, 2017 through September 2, 2017. On September 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant and her mother lived together. Sometime before July 2017, claimant's mother developed congestive heart failure, severe aortic stenosis and chronic obstructive pulmonary disease (COPD). In July 2017, the treating physicians authorized claimant's mother to receive in-home hospice care since her life expectancy was less than six months. At that time, claimant's mother required care and monitoring throughout the day if she was to remain living in the home that she and claimant shared.

(2) As of July 2017, the Department of Human Services (DHS) provided a caregiver for claimant's mother for six hours per week and the hospice program provided a medical assistant for two hours per week. Claimant's mother did not qualify for additional state-financed care because of the resources she possessed. Claimant determined that it would cost around \$18 per hour to hire a private caregiver for her mother. At that time, neither claimant nor her mother was able to afford to hire a private caregiver. Sometime before July 20, 2017, claimant left her position on an insurance company's sales team to care for her mother when the DHS caregiver and the hospice medical assistant were not able to do so.

Claimant's position with the insurance company had been full-time and paid \$16 per hour, which was less than the cost of a private caregiver's services.

(3) On July 20, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant's claim was determined valid with a weekly benefit amount of \$310. Claimant claimed, but was not paid benefits for the weeks of July 16, 2017 through August 19, 2017 and week of August 27, 2017 through September 2, 2017 (weeks 29-17 through 33-17 and week 35-17), the weeks at issue.

(4) During the weeks at issue, claimant sought work in telecommunication sales, report writing, editing, data collection and office administration. In claimant's labor market of Klamath Falls, Oregon, the usual days and hours for such work was all days, all hours. During the weeks at issue, claimant also sought work as a medical practice manager, veterinary assistant and an executive recruiter.

(5) During weeks 29-17 through 33-17, claimant was unwilling to accept work that would be performed outside of her and her mother's home if that work did not pay at least \$25 per hour. Claimant had concluded that \$25 per hour was the minimum wage that would allow her to cover the \$18 per hour cost for the caregiver that her mother would need if claimant worked outside the home and would allow her to keep some remuneration for her work. Claimant had previously earned \$25 per hour when she was working as a practice manager for a pediatric physician. Claimant was willing to accept work that paid less than \$25 per hour only if she could perform that work from her and her mother's home, via a telecommuting arrangement or otherwise.

(6) On August 22, 2017 (during week 34-17), claimant's mother died. Claimant did not claim benefits for week 34-17 because she did not seek work as a result of her mother's death. Claimant did claim benefits for week 35-17. As of week 35-17, since care was no longer required for claimant's mother, claimant ceased limiting the work she would perform outside of her home to that which paid at least \$25 per hour or any particular amount and ceased limiting the work she would perform for less than \$25 per hour to work that could be performed in her home. During week 35-17, claimant sought work with the insurance company she had left in July 2017.

(7) On September 10, 2017, claimant returned to work at the insurance company. That work paid \$16 per hour, was performed on the insurance company's premises and was part-time.

CONCLUSIONS AND REASONS: Claimant was not available for work during weeks 29-17 through 33-17 and is not eligible to receive benefits for those weeks. Claimant was available for work during week 35-17 and is eligible to receive benefits for that week.

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 and capable of reporting to all suitable full time, part time and temporary work opportunities throughout the labor market during all of the usual hours and days of the week customary for the work being sought, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* By logical extension of the holding in *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) where, as here, claimant was not paid benefits during the

weeks at issue, claimant carries the burden to show by a preponderance of the evidence that she was eligible to receive benefits for those weeks, or that she was available for work.

Claimant testimony at hearing was sincere and credible. Given claimant's need to arrange and pay for care for her gravely ill mother that would cost \$18 per hour if she accepted work outside of the home, it was understandable that claimant would only accept such work if it paid enough to cover the cost of the caregiver, which claimant determined was \$25 per hour. It also makes sense that claimant was willing to accept work that paid less than \$25 per only if it could be performed in her and her mother's home, obviating the need to pay for a private caregiver's services. While both limitations were understandable, the number of open positions in claimant's labor market for which claimant was qualified and which met the criteria that claimant imposed were, as a matter of common sense, far fewer in number than those that existed without such restrictions. There are no good cause exceptions to the requirement that to be eligible to receive benefits an individual must be willing and capable of reporting to *all* full-time, part-time or temporary job opportunities in the individual's labor market. By limiting the work she would accept paying less than \$25 per hour during weeks 29-17 through 33-17 to that which she would be allowed to perform in her home and limiting the work that she would accept and that would be performed outside of her home during those weeks to that which paid at least \$25 per hour, claimant imposed conditions that substantially reduced her opportunity to return to work at the earliest possible time. Accordingly, claimant was not available for all suitable work during weeks 29-17 through 33-17.

By ceasing to impose restrictions on the work she would accept after her mother's death, claimant became available for all work, without restrictions. Claimant was available for all suitable work during week 35-17.

DECISION: Hearing Decision 17-UI-92681 is affirmed.

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

DATE of SERVICE: October 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.

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