

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1191**

*Affirmed*  
*Request to Reopen Allowed*  
*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 July 2, 2017 to July 15, 2017 (decision # 102430). Claimant filed a timely request for hearing. On August 10, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 25, 2017, at which time claimant failed to appear. On August 25, 2017, ALJ Murdock issued Hearing Decision 17-UI-91170, dismissing claimant's hearing request for failure to appear. On September 5, 2017, claimant filed a timely request to reopen the hearing. On September 20, 2017, OAH mailed notice of a hearing scheduled for October 4, 2017. On October 4, 2017, ALJ Murdock conducted a hearing, and on October 6, 2017 issued Hearing Decision 17-UI-94053, allowing claimant's request to reopen, and concluding claimant was not available for work from July 2, 2017 to July 29, 2017. On October 11, 2017, claimant filed an application for review 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's request to reopen should be allowed are **adopted**.

**FINDINGS OF FACT:** (1) Prior to July 2017, claimant had worked for an Oregon corporation and was duty-stationed in Russia. In the years preceding July 2017, claimant had also lived and worked in Italy. Sometime prior to July 3, 2017, claimant's employment with the Oregon corporation ended.

(2) On July 3, 2017, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits for the weeks including July 2, 2017 through July 29, 2017 (weeks 27-17 to 30-17), the weeks at issue.

(3) At the time claimant filed her initial claim for benefits, she reported to the Department that her permanent address was in Texas. The Department established claimant's labor market to include the geographic area around the location where claimant reported living.

(4) From July 2, 2017 to July 6, 2017, claimant was physically located in Russia. From July 7, 2017 to July 19, 2017, claimant traveled to Italy. She then returned to Russia until approximately July 28, 2017, at which time she moved back to the United States and began residing in Texas.

(5) During the weeks at issue claimant primarily sought work by applying for jobs in Texas. It would have taken her several days of travel to return to Texas and begin working if she obtained a job there.

(6) Claimant also applied for work in Europe and Russia using business contacts she had developed in Italy and Russia. Claimant would have had to apply for a visa to work in Europe or get her visa transferred to a new employer to work in Russia, which would have required her to undergo legal processes with foreign governments. Claimant was an experienced foreign worker and based upon her experiences obtaining work visas felt confident that she would be able to obtain the legal right to work if she obtained a job in either country; however, the legal processes claimant would have had to undergo in either country would have taken time to complete and necessitated a waiting period between claimant's receipt of a potential job offer and the date she was legally able to begin working.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was not available for work from July 2, 2017 to July 29, 2017.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). ORS 657.155(2) provides:

- (a) 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 within the meaning of this section.
- (b) The presumption described in paragraph (a) of this subsection may be overcome if the individual establishes to the satisfaction of the director that the individual:
  - (A) 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
  - (B) Was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market.

An individual is considered available for work if she is physically present in the labor market every day of the week unless she is, in pertinent part, either actively seeking work outside his or her normal labor market area or infrequently absent from the normal labor market for less than half the week. OAR 471-030-0036(3)(d). The labor market is established by the Department's adjudicators and defined, in pertinent part, as the geographic area surrounding claimant's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. OAR 471-030-0036(6).

Claimant reported to the Department that her permanent residence was located in Texas. Her labor market, as established by the Department, therefore included the geographic area surrounding claimant's Texas residence. Claimant was not physically present in her normal labor market area during any of the

weeks at issue, and her absences were not infrequent. She is therefore presumed under ORS 657.155(2) to be unavailable for work.

Claimant may overcome the presumption if she was required to be outside her labor market area to apply for suitable employment within her labor market. Because she was not required to be outside her labor market for that purpose, she has not overcome the presumption for that reason.

Claimant may also overcome the presumption if she conducted a bona fide search for work and was reasonably accessible to suitable work in the labor market area in which she spent the major portion of the weeks to which the presumption applies. During the weeks at issue, claimant spent her time in Russia and Italy, or traveling between those countries. The record does not show that she was reasonably accessible to work in those areas, however, given that during the weeks at issue claimant lacked the legal right to work in either country. Regardless that claimant could have obtained the legal right to work in either country if offered work, she did not have it during the period of time she claimed benefits.

Even if she had, the record also does not show that she conducted a bona fide search for work in either location. Although the Department has not defined the term “bona fide search for work” for purposes of ORS 657.155(2), OAR 471-030-0036(3)(d) equates the term, for purposes of the labor market presumption, to an individual “actively seeking work.” OAR 471-030-0036(5) defines “actively seeking work” as conducting “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,” and “direct contact” as “making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer.”

As a preliminary matter, although claimant had business contacts and did do some work seeking activities in both Russia and Italy, the record shows that claimant primarily searched for work in Texas, suggesting that claimant did not conduct a bona fide search for work in Russia or Italy. The record also fails to show that claimant conducted a “bona fide” or “active” work search outside her normal labor market by conducting five work seeking activities or making at least two direct employer contacts per week in Russia or Italy while she was residing in those areas. In the absence of such evidence, we cannot conclude that claimant has overcome the legal presumption that she was not available for work when she was away from her normal labor market during the weeks at issue.

Claimant was not available for work during the weeks at issue. She is, therefore, not eligible for unemployment insurance benefits during those weeks.

**DECISION:** Hearing Decision 17-UI-94053 is affirmed.

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

**DATE of Service:** November 14, 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](http://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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