

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1246**

*Hearing Decision 17-UI-94318 Affirmed – Claimant’s Request to Withdraw Allowed*  
*Hearing Decision 17-UI-94514 Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 8, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions concluding claimant voluntarily left work with good cause (decision # 152208) and was not available for work from August 13, 2017 to August 26, 2017 (decision # 152737). Claimant filed timely requests for hearing on both decisions. On October 11, 2017, ALJ R. Frank issued Hearing Decision 17-UI-94318, dismissing claimant’s request for hearing on decision # 152208 based upon his withdrawal of his request for hearing on that decision. Also on October 11, 2017, ALJ R. Frank conducted a hearing on decision # 152737, and on October 13, 2017 issued Hearing Decision 17-UI-94514, concluding that claimant was not available for work from August 13, 2017 to September 30, 2017. On October 30, 2017, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB). EAB considered claimant’s written argument when reaching a decision on review of Hearing Decision 17-UI-94514.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-94318 and 17-UI-94514. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1245 and 2017-EAB-1246).

With regard to Hearing Decision 17-UI-94318, EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 17-UI-94318 is **adopted**.

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-94514 is reversed and this matter remanded for additional proceedings.

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) the individual must, among other things, be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. OAR 471-030-0036(3) (February 23, 2014).

The ALJ concluded that claimant was not available for work from August 13, 2017 through September 30, 2017 because prior to claiming unemployment insurance benefits he missed up to two days per week to care for his gravely ill spouse, and reported to the Department on September 8, 2017 that he was not capable of working full time for the same reason. Hearing Decision 17-UI-94514 at 2-3. , However, additional evidence is needed to support a determination as to whether or not claimant was available for work during the period at issue.

Whether an individual is or is not available for work involves a week-by-week inquiry into the individual's availability for full-time work and the limitations the individual placed on his availability to work. Claimant testified that his availability for work and ability to work full time fluctuated week-by-week depending on his spouse's need for care. *See e.g.* Audio recording at ~ 16:40, 17:30. Absent a week-by-week inquiry into claimant's circumstances during each of the weeks at issue, the record cannot support a finding as to whether or not claimant was or was not available for work during each of those weeks. On remand, claimant should be prepared to testify about whether or not he was capable of working full time during all the days and hours customary for the type(s) of work he sought during each individual week between August 13, 2017 and September 30, 2017.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of claimant's availability for work during each week at issue, Hearing Decision 17-UI-94514 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 17-UI-94318 is affirmed. Hearing Decision 17-UI-94514 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>1</sup>

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

**DATE of Service:** November 21, 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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<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-94514 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.