

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1268**

*Affirmed*  
*Ineligible Weeks 31-17 and 33-17 Through 36-17*

**PROCEDURAL HISTORY:** On August 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks from July 30, 2017 through August 5, 2017 and from August 13, 2017 through August 19, 2017 (decision # 155022). Claimant filed a timely request for hearing. On October 25, 2017, ALJ Seideman conducted a hearing, and on October 26, 2017 issued Hearing Decision 17-UI-95416, modifying the Department's decision to conclude that claimant was not available for work during the weeks from July 30, 2017 through August 5, 2017 and from August 13, 2017 through September 9, 2017. On November 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) From July 30, 2017 through September 9, 2017, claimant was enrolled in classes at Portland Community College that were on Tuesdays from 6:00 p.m. to 9:30 p.m., and Thursdays from 9:30 a.m. until 12:30 p.m. The classes were not available on other days or at other times.

(2) On August 2, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from July 30, 2017 through August 5, 2017, and from August 13, 2017 through September 9, 2017 (weeks 31-17, and 33-17 through 36-17), the weeks at issue.

(3) During the weeks at issue, claimant was seeking work as a receptionist, hostess and a teller at a bank. Claimant's labor market was the Portland metropolitan area. The customary hours and days for receptionist work are day shift, Monday through Friday. The customary hours and days for hostess work are all days, all shifts. The customary hours and days for teller work at a bank are day shift, Monday through Saturday.

(4) When claimant listed the hours she was available for work on work applications she submitted to employers during the weeks at issue, claimant listed hours that excluded the hours she was scheduled to be in class. Claimant was not willing to work a swing shift on Tuesdays or Thursdays. Claimant would have had to accept a failing grade if she were to withdraw from a class during the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks at issue and is not eligible to receive 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). 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 full time, part time and temporary work opportunities throughout the labor market during all of the usual days and hours customary for the type of work the individual is seeking, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.*

The preponderance of the evidence at hearing showed that claimant was unwilling to accept work that conflicted with her class schedule during the weeks at issue. Moreover, it was too late in the term for claimant to withdraw from her classes without being penalized with a failing grade. Because claimant’s classes took place during some of the days and hours customary for the type of work claimant was seeking, claimant was not willing to report for all work opportunities during all of the usual days and hours customary for that work during the weeks at issue. For these reasons, claimant was not available for work during the weeks at issue.

At hearing, claimant asked the Department why it would deny benefits while claimant pursued a degree. Audio Record at 19:20 to 19:41. The law and rules applicable to claimant’s case are clear: in order to be eligible for unemployment insurance benefits claimants must be “available” for work (ORS 657.155(1)(c)), and “available” means that the claimant must be willing to work during all of the usual hours and days of the week customary for the work being sought (OAR 471-030-0036(3)(a)), which, in claimant’s case, include the hours during which her classes were scheduled. The laws and rules set forth in ORS chapter 657 and OAR chapter 471 that govern unemployment insurance benefit eligibility do not contain any exception for individuals who are, like claimant, attending college “doing all that [she] can to . . . work towards doing the best that [she] can for [her] future.” Audio Record at 19:20 to 19:41. For those reasons, claimant is ineligible for unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-95416 is affirmed.

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

**DATE of Service:** December 5, 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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