

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1309

Affirmed
Ineligible Week 35-17
Overpayment Assessed

PROCEDURAL HISTORY: On September 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from August 27, 2017 through September 2, 2017 and that she was overpaid \$277 in benefits for that week (decision # 113536). Claimant filed a timely request for hearing. On October 31, 2017, ALJ Murdock conducted a hearing, and on November 3, 2017 issued Hearing Decision 17-UI-96169, affirming the Department's decision. On November 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the hearing record and claimant's written argument. Claimant does not dispute that she was not available for work on May 31 and September 1, 2017 because she had to move from her apartment on those days to avoid being charged a large amount of additional rent that she could not afford. While it was financially advantageous and apparently logical to miss two days of work to avoid having to pay a large sum of rent, under the definition of "available for work" provided by Employment Department rules, claimant was not available for work for week 35-17, the week containing the days she was unavailable due to her need to move.

OAR 471-030-0036(3) (February 23, 2014) defines "available for work" to include, among other things, that claimant be willing to accept temporary work opportunities during *all of the usual hours and days of the week* customary for the work being sought. While claimant pointed out in her argument that she did not always work on a floral farm, which was the work she was offered during week 35-17, she was seeking such work during that week because she had worked for the employer previously and was offered work there on May 31 and September 1. Although claimant missed work those two days for what was apparently a good reason - her need to move - the laws and rules applicable to unemployed individuals claiming unemployment insurance benefits require an individual to be available for work *all* days and hours customary for the work they seek, and prohibit claimants from placing significant

limitations upon their availability, even if a claimant has good reason to do so.¹ It is for these reasons that claimant was not “available for work” during week 35-17 as under OAR 471-030-0036(3), and therefore is not eligible for benefits for that week.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 17-UI-96169 is affirmed.

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

DATE of Service: December 8, 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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¹ For example, a regularly employed person might have to refuse work due to illness. Under OAR 471-030-0036(3)(f), an individual claiming benefits is not available, and not eligible for benefits, if she misses even one work opportunity in a week due to illness or injury.