

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1340

Reversed
Eligible

PROCEDURAL HISTORY: On October 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 3, 2017 to October 7, 2017 (decision # 101830). Claimant filed a timely request for hearing. On November 6, 2017, ALJ A. Mann conducted a hearing and issued Hearing Decision 17-UI-96292, concluding claimant was not available for work from September 3, 2017 to November 4, 2017. On November 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 23, 2017, claimant filed an initial claim for benefits. He filed weekly claims for benefits from September 3, 2017 to November 4, 2017, the weeks at issue.

(2) During the weeks at issue, claimant sought work, among other things, as an engineer. The customary days and hours for engineering work were all days and shifts.

(3) During the weeks at issue, claimant regularly had responsibility for caring for his two children, both of whom were over ten years old. Claimant did not have specific childcare plans for his children should he obtain a job but was prepared to accept and attend work if offered it. Claimant felt comfortable leaving his children alone if necessary and was not prohibited by law from doing so.

(4) Claimant applied for day shift jobs and applied for jobs that did not list the hours of work. He did not tell potential employers that he was only willing to work day shift. He did not tell potential employers that, if hired, his ability to start work would be contingent on securing child care.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant was available for work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must be available for 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, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

The ALJ concluded that claimant was not available for work during the weeks at issue because he “did not have child care for two children under the age of 12,” and therefore “limited his work seeking activities to work that could be performed during day hours.” Hearing Decision 17-UI-96292 at 2. The record does not support the ALJ's finding that claimant limited his work seeking activities to day shift hours, however, because claimant sought work that did not list any hours in the job announcements and did not tell employers he would only work the day shift or would not work night shifts.

The ALJ also asserted that “[e]ven though he also applied for work that did not specify hours and he testified that he would have taken jobs that included night work, because he did not pre-arrange for child care his testimony was not persuasive,” and that he “was only willing to work during the day shift.” Hearing Decision 17-UI-96292 at 3. We disagree. During the weeks at issue, claimant had no reason to arrange for child care, and his lack of arrangements does not affect his eligibility for benefits unless a lack of prearranged child care substantially limited his ability to return to work at the earliest time. Here, however, claimant established that he was prepared to accept work regardless of his ability to immediately secure child care. That claimant sought work without limiting which shifts he would have to work or telling prospective employers that he could not work certain hours or needed time to find child care if hired supports his claim that lacking child care was not a barrier to finding or accepting work. In the event claimant could not find child care, he was also comfortable leaving his children alone, which is not prohibited by law. The ALJ's conclusion that claimant was not available for work during the weeks at issue is, therefore, not supported by the evidence. Claimant's availability for work was not contingent upon his child care obligations during the weeks at issue, and, as such, the record fails to show that claimant's child care obligations imposed conditions that substantially limited his availability to work during the weeks at issue. Claimant was, therefore, available for work during the weeks at issue.

DECISION: Hearing Decision 17-UI-96292 is set aside, as outlined above.

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

DATE of Service: December 15, 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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