

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1373**

*Affirmed*  
*Ineligible Week 39-17*

**PROCEDURAL HISTORY:** On October 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 24, 2017 to September 30, 2017 (decision # 73830). Claimant filed a timely request for hearing. On November 13, 2017, ALJ Amesbury conducted a hearing, and on November 15, 2017 issued Hearing Decision 17-UI-96843, affirming the Department's decision. On November 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB that contained copies of emails that were not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing, and claimant's argument to the extent it was not based on new information, when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant filed a claim for unemployment insurance benefits for the week of September 24 through September 30, 2017 (week 39-17). The Department denied claimant benefits for week 39-17, the week at issue.

(2) During week 39-17, claimant sought work as a substitute teacher, courtesy clerk and administrative specialist. Claimant worked part time as a courtesy clerk for Safeway Stores, Inc., the employer, in Seaside, Oregon.

(3) On September 21, 2017, claimant received notice that he would have a clerical examination at 10:00 a.m. on September 25, 2017 in Hillsboro, Oregon. The test was required for the application process for an administrative specialist position for a new employer.

(4) Also on September 21, 2017, claimant received his weekly work schedule from Safeway. The employer had scheduled claimant to begin work at 1:00 p.m. on September 25. Claimant asked the employer if he could begin work at 2:00 p.m. to ensure he had time to complete the clerical examination

and drive back to Seaside. The employer gave claimant the day off work instead. Claimant was not available to work all the hours customarily worked by a courtesy clerk on September 25.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant was not available for work from September 24, 2017 to September 30, 2017 (week 39-17).

ORS 657.155(1)(c) requires that claimants be available for work as a condition of being eligible for unemployment insurance benefits. Under OAR 471-030-0036(3)(a), the Department defines “available for work” to include, in pertinent part, being willing and capable of accepting and reporting for work within the labor market in which work is being sought during *all of the usual hours* and days of the week customary for the work being sought and refraining from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *See* OAR 471-030-0036(3) (February 23, 2014).

Prior to his scheduled work shift on September 25, claimant informed the employer that he was not able to begin work at 1:00 p.m. as scheduled, and requested that his shift be postponed by one hour. The ALJ addressed whether claimant did or could have made up the shift during the same week and whether claimant had a valid reason for requesting a change in his schedule. Hearing Decision 17-UI-96843 at 3. Neither inquiry is relevant here. Regardless of whether claimant was willing or able to make up the work time or the merit of taking the clerical test instead of reporting to work at Safeway at 1:00 p.m., claimant was not willing to work at the time he was scheduled to work, which was during his customary scheduled work hours as a courtesy clerk. Thus, although claimant was generally available to work on September 25, he was not available to work during *all of the usual hours* for the work being sought. Refusing to work at 1:00 p.m. on September 25 thus demonstrated that claimant was not available for work during that week, week 39-17.

**DECISION:** Hearing Decision 17-UI-96843 is affirmed.

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

**DATE of Service: January 3, 2018**

**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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