

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1426

Affirmed
Ineligible

PROCEDURAL HISTORY: On October 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available, able and actively seeking work during the weeks of December 25, 2016 through February 4, 2017 and September 24, 2017 through October 21, 2017 (decision # 80425). Claimant filed a timely request for hearing. On November 27, 2017, ALJ Murdock conducted a hearing at which the employer did not appear, and on December 1, 2017 issued Hearing Decision 17-UI-98046, concluding claimant was not available for work during the weeks of December 25, 2016 through February 4, 2017 and September 24, 2017 through November 18, 2017. On December 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant and his wife were committed members of the Jehovah's Witnesses Church. Claimant's wife became a "regular pioneer" in the Jehovah's Witness Church in approximately 2003. A regular pioneer was obligated to volunteer 70 hours per month in a Jehovah's Witnesses outreach ministry, which usually involved devoting approximately 17.5 hours per week to volunteer activities. In June 2012, claimant became a regular pioneer in a Jehovah's Witnesses' ministry in which he sought to engage members of the deaf and hard of hearing community in a Bible study program. At that time, claimant was working full-time and he asked his employer if he could work only part-time and have Fridays off to allow him to perform his volunteer activities as a regular pioneer. That employer agreed. Thereafter, both claimant and his wife performed regular pioneer volunteer work in their respective ministries on Fridays. Claimant believed that volunteering as a regular pioneer was very important.

(2) On December 23, 2016, claimant's then-employer laid him off. At the time he was laid off, claimant was still not working for compensation on Fridays, and was continuing to perform volunteer work as a regular pioneer on Fridays as he had done since 2012. Sometime after December 23, 2016, claimant applied for unemployment insurance benefits. Claimant's claim was determined valid. Claimant claimed benefits for the weeks of December 25, 2016 through February 4, 2017 (weeks 52-16 through 05-17), the first six of the weeks at issue.

(3) Sometime before February 2017, claimant inquired about work as a medical office receptionist at Salem Pain & Spine Specialists. In early February 2017, the office manager for Salem Pain & Spine Specialists offered claimant a job. Claimant told the office manager that it was his “preference” not to work on Fridays and asked if it was “possible” for him to work only Mondays through Thursdays, which would allow him to continue to devote Fridays to his regular pioneer work for the Jehovah’s Witnesses Church. Audio at ~17:06. The employer agreed to claimant’s request, and claimant began working part-time. Claimant began working for the employer on February 6, 2017 and stopped claiming benefits as of week 06-17.

(4) During the time that claimant worked for the employer, claimant was not regularly scheduled to work Fridays. However, in approximately August 2017, two receptionists left work with the employer and the employer’s office manager asked claimant if he was able to temporarily work on the final two Fridays of August 2017. Claimant discussed with his wife whether he would work for the employer on those Fridays, rather than engaging in his volunteer activities as a regular pioneer. It was important to claimant that he and his wife agree in this matter since both of them used Fridays to work in ministries as regular pioneers. Claimant’s wife agreed that he could temporarily work on those two Fridays for the employer. Claimant worked on Friday August 18 and 25, 2017 for the employer. Thereafter, claimant went back to working Monday through Thursday for the employer. Claimant and his wife continued engaging in volunteer work as regular pioneers on Fridays.

(5) On September 20, 2017, the employer let claimant go. Shortly afterward, claimant claimed benefits again. Claimant claimed benefits for the weeks of September 24, 2017 until November 18, 2017 (weeks 39-17 through 46-17), the last eight weeks at issue. Collectively, weeks 52-16 through 05-17 and 39-17 through 46-17 comprise the weeks at issue.

(6) During all fourteen of the weeks at issue, claimant was seeking work as a medical office receptionist and a general and administrative office worker. The customary days and hour for a medical office receptionist in claimant’s labor market were Mondays through Fridays, 8:00 a.m. until 5:00 p.m.

(7) During all of the weeks at issue, claimant continued to devote Fridays to volunteer work as a regular pioneer for the Jehovah’s Witnesses Church as he had done for the past five years. Although claimant could theoretically have moved his volunteer activities to weeknights and weekends such that he would be free to work at a compensated job on Fridays between 8:00 a. m. and 5:00 p.m., he did not actually schedule his volunteer activities during the weeks at issue to leave his Fridays open for compensated work. While claimant was “potentially able” to perform compensated work on Fridays and would “consider” working on Fridays if it was necessary, he would not do so unless his wife agreed that he should discontinue his volunteer work in the ministry on Fridays, despite the fact that she was also performing her own volunteer work on Fridays. Audio at ~17:52, ~18:12, ~18:27. During the weeks at issue, claimant and his wife discussed the possibility that he might need to perform compensated work on Fridays and decided “whatever happens, happens” and “things are not always ideal in this world.” Audio at ~24:18, ~24:55. However, both claimant and his wife agreed that engaging in volunteer activities as regular pioneers was an “important thing for us to be involved in based on where we are in this chain of time in humanity.” Audio at ~24:40. They also discussed whether they were willing to accept having claimant performing compensated work permanently on Fridays, and they decided “to take it one step at a time and first see what jobs are even offered to [claimant]” and to “consider it [at that time] and go from there.” Audio at ~26:16.

CONCLUSIONS AND REASONS: Claimant was not available for work during weeks 52-16 through 05-17 and weeks 39-17 through 46-17, 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 days and hours customary for the work being sought, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.* Claimant did not dispute at hearing that the days customary for the work he was seeking during the weeks at issue were Mondays through Fridays.

When the ALJ generally inquired of claimant during the hearing if he was available for work during all of the days and hours customary for the medical receptionist and office work he sought during the weeks at issue, claimant broadly asserted that he was. Audio at ~13:00, ~18:27. However, when the ALJ directly and pointedly asked claimant if he would accept a job offered to him if the job required him to work on Fridays, claimant’s response was, at best, uncertain, diffident, tentative, hesitant and conditional. Claimant testified that he was “potentially available” to work on Fridays, that it would be “possible” for him to accept a job where he was required to work on Fridays, that a Friday job “potentially could have been an option” and that he would “consider” such a job and might accept it, but only if his wife agreed to his discontinuing his volunteer activities on Fridays. Audio at ~17:52, ~18:12, ~18:27, ~19:26. Were claimant actually willing to work on Fridays as a practical matter, despite his volunteer activities, he would have been expected to testify without qualification or equivocation that he would accept a job in which he needed to work on Fridays. While we do not doubt that claimant sincerely considered himself available for work during all of the days customary for the work he was seeking, the careful phraseology with which he responded to the ALJ’s directed inquiries about whether he was willing to work on Fridays casts serious doubt on whether he actually would, in fact, have done so by accepting a job with a work schedule that conflicted with his Friday volunteer activities. As well, viewed against the backdrop of the strength of claimant’s commitment to his volunteer activities as a regular pioneer, his having avoided working on Fridays during the preceding five years to allow him to devote Fridays to volunteer activities with his wife, and not having taken any steps to re-arrange his volunteer activities so that his Fridays and other weekdays were free for compensated work, it is doubtful that claimant would actually, rather than merely hypothetically, have been willing to accept a job that required him to work on Fridays. The preponderance of the evidence in this record establishes that during the weeks at issue claimant, most likely, was not willing to work on Fridays due to conflicts with his scheduled volunteer activities. Accordingly, it is likely that claimant was not willing to report for work during all of the customary days for the work he was seeing and, by not working on Fridays, he was imposing a condition that substantially limited his opportunities to return to work at the earliest possible time. Claimant was not available for work during weeks 52-16 through 05-17 and weeks 39-17 through 46-17, and is not eligible to receive benefits during those weeks.

DECISION: Hearing Decision 17-UI-98046 is affirmed.

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

DATE of Service: January 12, 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. 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.