

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0159

Hearing Decision 18-UI-101864 Affirmed
(Ineligible Weeks 44-17 through 49-17; 52-17 through 02-18)

Hearing Decision 18-UI-101871 Affirmed
(Ineligible Week 46-17)

Hearing Decision 18-UI-101872 Affirmed
(Ineligible Weeks 46-17 through 48-17)

PROCEDURAL HISTORY: On November 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks including October 29, 2017 through November 11, 2017 due to a lack of child care and that the denial was ongoing until the reason for the denial had ended (decision # 123437). On December 14, 2017, the Department served notice of two administrative decisions, one concluding claimant was not available for work during the week including November 12, 2017 through November 18, 2017 because she missed a suitable work opportunity due to a car accident (decision # 130305), and the other concluding claimant was not available for work during the weeks including November 12, 2017 through December 2, 2017 because she lacked adequate transportation (decision # 131110). Claimant filed timely requests for hearing on all three decisions.

On January 25, 2018, ALJ M. Davis conducted a consolidated hearing on decisions # 123437, # 130305 and # 131110, during which she also took jurisdiction, with claimant's consent, over claimant's claims for benefits for the weeks including November 12 through December 9, 2017 and December 24, 2017 through January 13, 2018. On January 26, 2018, the ALJ issued Hearing Decision 18-UI-101864, modifying decision # 123437 as to the weeks at issue and concluding claimant was not available for work from October 29 through December 9, 2017 and December 24, 2017 through January 13, 2018, Hearing Decision 18-UI-101871 affirming decision # 130305, and Hearing Decision 18-UI-101872 affirming decision # 131110.

On February 14, 2018, claimant filed timely applications for review of all three hearing decisions with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 18-UI-101864, 18-UI-101871 and 18-UI-101872. For

case-tracking purposes, this decision is being issued in triplicate (Appeals Board Decisions 2018-EAB-0159, 2018-EAB-0160 and 2018-EAB-0161, respectively).

FINDINGS OF FACT: (1) On November 1, 2017, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits for the weeks including October 29 through December 9, 2017 and December 24, 2017 through January 13, 2018 (weeks 44-17 through 49-17 and 52-17 through 02-18), the weeks at issue.¹ The Department did not pay claimant benefits for any of the weeks at issue.

(2) During the weeks at issue, claimant sought work in parcel delivery and food service. Her labor market included Beaverton, Hillsboro, Tigard, Tualatin and the Portland metropolitan area. In claimant's labor market, the customary days and hours for work in general food service was all days, 4:00 a.m. to midnight, in fast food service, all days and all hours, and in parcel delivery service, Monday through Saturday, 7:00 a.m. to 9:00 p.m.

(3) At all relevant times, claimant was the single parent of two minor children. During the weeks at issue, when claimant applied for work, she informed potential employers that generally she was available only Monday through Friday from 6:00 a.m. to 6:00 p.m. In the food service industry, that meant claimant was able to work the full lunch shift but only parts of the breakfast and dinner shifts. Claimant was unable to work during other times due to a lack of child care.

(4) During the week of November 12 through November 18, 2017, claimant missed a work opportunity with United Parcel Service (UPS) because, on November 17, 2017, she was involved in a vehicular accident in which her motor vehicle was damaged after which it was not drivable.

(5) During the weeks of November 12 through December 2, 2017, claimant lacked transportation to get to and from work because her vehicle was not drivable after November 17 and she was unable to obtain a replacement vehicle until November 29, 2017.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was not available for work during the weeks at issue.

ORS 657.155(1)(c) requires that individuals be available for work during each week claimed as a condition of being eligible to receive unemployment insurance benefits. OAR 471-030-0036(3) (February 23, 2014) provides, in pertinent part, that an individual is considered "available for work" if she or he is willing and capable of accepting and reporting for all suitable work opportunities within her labor market "during all of the usual hours and days of the week customary for the work being sought."

The hours and days of the week customary for the work claimant sought included, at the very least in parcel delivery, Monday through Saturday from 7:00 a.m. to 9:00 p.m. and in food service, all days 4:00 a.m. to 12:00 a.m. Claimant testified that she informed potential employers that she was only available

¹ During the January 25, 2018 hearing, the Department's witness stated that the Department denied benefits to claimant for weeks including November 12 through December 9, 2017 and December 24, 2017 through January 13, 2018 for the same reasons identified in decision # 123437, which was an ongoing denial, and asked the ALJ to take jurisdiction over those weeks. Claimant did not object and the ALJ agreed to do so. Audio Record ~ 4:00 to 6:15.

on Mondays through Fridays from 6:00 a.m. to 6:00 p.m., meaning claimant was not available to work during two of three “full” shifts in the food service industry and one of two full shifts in the parcel delivery industry, nor was she available to work the weekend shifts in either fields of work. Audio Record ~ 8:00 to 9:15. Because the usual hours and days of the week customary for work in parcel delivery and food service in claimant’s labor market included hours outside her stated availability to potential employers, and claimant was not willing to work outside of those stated days and hours, under OAR 471-030-0036(3), she was not “available for work.”

OAR 471-030-0036(4) excuses individuals with children under 13 years of age from having to be available for all of the customary days and hours for the work being sought, but only under certain conditions, including that the individual confine her unavailability to “a particular shift,” the work is performed during other shifts, and that the individual be willing to and capable of working during such shifts. The exception does not apply to claimant’s circumstances. Claimant did not confine her unavailability to work to just one particular shift, she was unwilling or unable to work two full shifts, breakfast and dinner, in the food service industry, and was unwilling to work during several of the typical hours for parcel delivery work as well, in addition to her unwillingness to work weekends, as stated to potential employers.

As the result of claimant’s auto accident and subsequent lack of a vehicle between November 17 and November 29, 2017, claimant lacked a reliable means of transportation necessary to report for work to all suitable opportunities within her labor market. Consequently, during the weeks including November 12 through December 2, 2017, was not available for work for that additional reason.

In sum, we conclude that claimant was not available to work during the weeks at issue. She is, therefore, not eligible to receive unemployment insurance benefits during those weeks.

DECISION: Hearing Decisions 18-UI-101864, 18-UI-101871 and 18-UI-101872 are affirmed.

J. S. Cromwell and S. Alba;
D. P. Hettle, not participating.

DATE of Service: March 8, 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.

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