

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0194

Affirmed
Ineligible Weeks 50-17 through 1-18

PROCEDURAL HISTORY: On January 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from December 10, 2017 through January 6, 2018 (decision # 74433). Claimant filed a timely request for hearing. On February 7, 2018, ALJ Wyatt conducted a hearing, and on February 9, 2018 issued Hearing Decision 18-UI-102999, affirming the Department's decision. On February 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant claimed benefits from December 10, 2017 through January 6, 2018 (weeks 50-17 through 1-18), the weeks at issue. The Department did not pay claimant benefits for those weeks.

(2) Claimant's normal labor market area was Milton-Freewater, Oregon. During the weeks at issue, claimant sought work in a sales or service position.

(3) From December 12, 2017 through January 4, 2018, claimant was in Florida for the purpose of resolving differences she had with her daughter-in-law. While in Florida, claimant sought work in Milton-Freewater. Claimant did not seek work in Florida.

CONCLUSION AND REASONS: We agree with the ALJ and conclude claimant was not 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 capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought. OAR 471-030-0036(3)(b). ORS 657.155(2)(a) provides that an individual who leaves the individual's normal labor market area for

the major portion of any week is presumed to be unavailable for work. The presumption may be overcome if the individual establishes that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies, or was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market. ORS 657.155(2)(b). Thus, to be considered available for work, such an individual must be physically present in her normal labor market area every day of the week unless the individual is actively seeking work outside her normal labor market area, or the individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence. OAR 471-030-0036(3)(d). Where the Department has not paid claimant benefits, claimant has the burden to establish by a preponderance of the evidence that she was available for work. *See accord Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (establishing that where the Department has paid benefits, the Department has the burden to establish that benefits should not have been paid).

In the present case, the issue is whether claimant was available for work during the four weeks at issue, and it is undisputed that she was outside of her normal labor market area for the major portion of all four weeks, and therefore is presumed to be unavailable for work during those weeks. For claimant to overcome the presumption that she was unavailable for work during the weeks at issue, ORS 657.155(2)(b) required her to establish that she conducted a bona fide search for work and was reasonably accessible to suitable work in the Florida labor market area, which is where she spent the major portion of all four weeks. Thus, to be considered available for work during the weeks at issue under OAR 471-030-0036(3)(d), claimant was required to show that she was actively seeking work in the Florida labor market area. It is undisputed that claimant did not seek work in the Florida labor market area. Nor does the record show that claimant was interested in working in that area, having gone to Florida for the purpose of resolving differences with a family member, and not for the purpose of looking for work. She therefore was not available for work during the weeks at issue.

At hearing and in her written argument, claimant argued that she should be eligible for unemployment insurance benefits because the Department did not tell her, and she did not otherwise know, that "because [she] was away from [her] permanent residence [in Milton-Freewater] for more than 3 days [that she] would need to look for work in [Florida] in order to qualify for benefits." Audio Record at 18:14-18:48; Claimant's Written Argument. Claimant's misunderstanding of the law on this issue does not excuse her from the effects of that law. On this record it does not appear that the Department misinformed claimant about the requirement, nor does it appear that the Department under a particular obligation to inform claimant of the requirement under the circumstances of this case. Claimant was, therefore, subject to the effects of the law, as is every other unemployment insurance claimant.

Moreover, the plain intent of the law and rule allowing an individual to overcome the presumption of unavailability by looking for work in an area outside her labor market is not that she should merely look for work in another area with no intention of relocating should she find a job. Rather, the rule allows an individual who wants to or is willing to relocate to an area outside her labor market, and is looking for work in that area prior to moving, to continue being eligible for benefits despite being outside her normal labor market. In the present case, there is no evidence to show that claimant was willing to accept work in Florida had she looked for work there. She stated that her purpose for going to Florida was to address her relationship with a family member, and she did not look for work while she was

there. Had her purpose in traveling to Florida been to find work there, presumably she would have looked for work there regardless of her understanding of the Department's rules. Even had claimant looked for work in Florida, unless claimant was willing to accept a job in Florida and relocate if she obtained one, she would still be unavailable for work. Merely looking for work without the willingness to immediately accept that work, would not overcome the presumption that she was unavailable for work.

Claimant was not available for work during the weeks at issue. She therefore is ineligible for benefits for those weeks.

DECISION: Hearing Decision 18-UI-102999 is affirmed.

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

DATE of Service: March 15, 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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