

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0214

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from December 10, 2017 to January 13, 2018 (decision # 94321). Claimant filed a timely request for hearing. On February 14, 2018, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on February 15, 2018 issued Hearing Decision 18-UI-103410, affirming the Department's decision. On February 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 18, 2017, claimant filed an initial claim for unemployment insurance benefits.

(2) On or before December 16, 2017, the employer told its employees in claimant's store that it was going to lay off some employees until January 13, 2018. The employer asked for volunteers for the layoff and told the employees they would qualify for unemployment insurance benefits. Claimant volunteered to take a leave of absence until January 13, 2018. Claimant did not know if the employer would have laid her off had she not volunteered to be laid off. Not all the employer's employees were laid off.

(3) Claimant claimed benefits for the period of December 10, 2017 to January 13, 2018 (weeks 50-17 through 2-18), the weeks at issue. The Department gave claimant waiting week credit or paid her benefits for the weeks at issue.

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

ORS 657.155(1)(c) requires that claimants be available for work each week as a condition of being eligible for unemployment insurance benefits. Under OAR 471-030-0036(3), the Department defines "available for work" to include, in pertinent part, being willing to work full time, part time, and accept

temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment, and not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time. OAR 471-030-0036 (3)(b), (c) (February 23, 2014). In any week in which the Department paid claimant benefits, the Department has the burden to prove claimant should not have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department met that burden for the weeks at issue.

Regardless of the merit of volunteering to take time off to benefit the employer or other employees, by volunteering to be laid off from work where she may not have otherwise been laid off from work, claimant showed an unwillingness to work during all of the usual hours and days of the week customary for her employment, and she imposed a condition that limited her opportunities to return to work for the employer during those weeks. Therefore, claimant was not available for work during the weeks at issue, and she is not eligible to receive benefits for those weeks.

At hearing, claimant argued that she should not be deemed ineligible based upon her reliance upon the employer's assurance that the employees who volunteered for the layoff would receive unemployment benefits insurance. Audio Record at 23:18-23:42. Claimant's argument is construed as a claim that the Department should be estopped from denying her benefits because her ineligibility was the result of false or misleading information the *employer* provided to her. Applying estoppel against a governmental agency such as the Department "requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it." *Wilkinson v. Public Empl. Ret. Bd.*, 188 Or App, 102 (2003) (quoting *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428 (1999)). Furthermore, a party must have reasonably relied on the agency's representations. *Wilkinson*, 188 Or App at 102. Claimant's argument does not apply here because the employer, and not the Department, made the false representation. Moreover, OAR 471-030-0036 contains no "good faith error" exception to fulfilling all of the weekly requirements for obtaining benefits. In other words, a claimant either meets weekly eligibility requirements for benefits, or he or she does not. In the present case, claimant did not.

Claimant was not available for work during the weeks from December 10, 2017 to January 13, 2018 (weeks 50-17 through 2-18) and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 18-UI-103410 is affirmed.

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

DATE of Service: March 29, 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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