

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0219

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work from December 10, 2017 to December 16, 2017 (decision # 85016). Claimant filed a timely request for hearing. On February 9, 2018, ALJ Scott conducted a hearing, and on February 12, 2018 issued Hearing Decision 18-UI-103041, concluding claimant was not available for work during that period. On March 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) On November 28, 2017, claimant filed an initial claim for unemployment insurance benefits. The Department paid claimant benefits for the week of December 10, 2017 through December 16, 2017 (weeks 50-17), the week at issue.

(2) Claimant's regular employer scheduled claimant to work on December 15, 2017. Claimant was ill and did not work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was not eligible for benefits for the week at issue.

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). For purposes of ORS 657.155(1)(c), an individual is *not* available for work in any week claimed if he "has an opportunity to perform suitable work during the week and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity." OAR 471-030-0036(3)(f)(A) (February 23, 2014).

During week 50-17, claimant was sick one day and missed an opportunity to work. He was therefore not available for work during that week.

At the hearing and in his written argument claimant acknowledged that he was sick on December 15th and missed work. He argued, however, that he “did not claim Dec. 15 as a day of unemployment reporting \$155 earnings for sick pay I would receive if available” but that he was available and “should be qualified for 4 days” of benefits for the rest of that week. *See* Claimant’s written argument. However, eligibility for unemployment insurance is based upon a week-by-week determination, not a day-by-day determination. *See* ORS 657.150(1) (an individual is paid benefits “for weeks” during the benefit year); ORS 657.155(1) (eligibility is determined by the “week”); OAR 471-030-0036(3)(f)(A) (providing that an individual is not available “any week” in which he misses an opportunity to work). In other words, individuals don’t claim days of unemployment, they claim weeks of unemployment, and if an individual is not available for work during any portion of a week, that individual is not eligible for benefits for that entire week. Unemployment benefits are not apportioned based on days of the week. Claimant cannot, therefore, be qualified to receive four days of benefits for the week at issue, and is instead ineligible for benefits for the entire week.

DECISION: Hearing Decision 18-UI-103041 is affirmed.

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

DATE of Service: March 28, 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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