

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0299

Affirmed
Ineligible Weeks 51-17 through 02-18

PROCEDURAL HISTORY: On January 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from December 17, 2017 to January 13, 2018 (decision # 142709). Claimant filed a timely request for hearing. On March 7, 2018, ALJ M. Davis conducted a hearing at which the employer failed to appear, and on March 8, 2018 issued Hearing Decision 18-UI-104695, affirming the Department's decision. On March 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On or around December 15, 2017, the employer, Lowe's Home Centers, told its warehouse 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 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. Claimant assumed she would be paid benefits based on statements from the employer.

(2) On December 18, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the period of December 17, 2017 to January 13, 2018 (weeks 51-17 through 02-18), the weeks at issue. The Department did not give claimant waiting week credit or pay her benefits for those weeks.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. 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). For any week the Department does not pay a claimant benefits, the claimant has the burden to prove benefits should have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). Here, claimant failed to meet that burden.

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, under the above cited rule, 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 17:30 to 19:15. However understandable claimant's decision may have been, OAR 471-030-0036(3) contains no "good cause" exception to that or any other requirement for benefit eligibility. "If the legislature had wished to require a good cause exemption under ORS 657.155(1)(c), it could have included it in the statute." *Doctor v. Employment Division*, 76 Or App 650, rev den 300 Or 704 (1985). 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 17, 2017 to January 13, 2018 (weeks 51-17 through 2-18) and is ineligible for benefits for those weeks.

DECISION: Hearing Decision 18-UI-104695 is affirmed.

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

DATE of Service: April 20, 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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