

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0306

Affirmed
Ineligible Weeks 05-18 through 10-18

PROCEDURAL HISTORY: On February 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the period January 28, 2018 through February 3, 2018 (decision # 125726). Claimant filed a timely request for hearing. On March 19, 2018, ALJ A. Mann conducted a hearing, and on March 20, 2018, issued Order No. 18-UI-105501, concluding claimant was not available for work during the period January 29 through March 10, 2018. On March 28, 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 hearing record, when reaching this decision.

FINDINGS OF FACT: (1) On January 20, 2018, claimant was separated from her employment as a cashier with Dollar Stores. During the period of her employment, claimant worked part-time.

(2) On January 29, 2018, claimant filed an initial claim for unemployment benefits. When claimant filed her initial claim, she was asked, "Is there any reason you cannot begin full time work now?" To that question, claimant replied, "Yes." When asked to explain, claimant replied, "on social security." Audio Record ~ 15:25 to 15:50. The Department determined claimant had a monetarily valid claim for benefits based on her total base year wages from all employers. Claimant claimed, but was not paid benefits for the weeks including January 28 through March 10, 2018 (weeks 05-18 through 10-18), the weeks at issue.¹

(3) On February 13, 2018, an adjudicator contacted claimant and discussed with her the requirements for benefit eligibility, including the requirement that she be available for full-time, part-time and temporary

¹ We take notice of the fact that claimant was not paid benefits for the weeks at issue, which is found in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

work. The adjudicator questioned claimant about her response when filing her initial claim that she could not work full time because she was “on social security.” The adjudicator asked claimant if a doctor had restricted her from working full time, to which claimant replied, “No, but I don’t want to lose social security benefits.” Audio Record ~ 15:50 to 16:50. Based on claimant’s response, the Department concluded that claimant was not willing to seek or accept full time work and denied claimant’s benefit claims for the weeks at issue on that basis.

(4) During the weeks at issue, claimant received \$786 per month in social security disability (SSD) benefits, which benefits, according to social security rules, would have been reduced had she earned more than \$1,180 in gross income per month.

(5) During the weeks at issue, claimant sought part-time work as a cashier. In claimant’s labor market, the days and hours customary for work as a cashier were all days and all shifts. Claimant was not willing to seek or accept full time work because she “[did not] want to lose social security benefits.”

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue and is ineligible for benefits for those weeks.

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). 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 willing to work and capable of reporting to all full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that substantially reduce the individual’s opportunities to return to work at the earliest possible time. *Id.* Here, claimant was not paid benefits during the weeks at issue. Accordingly, claimant had the burden to prove that she was eligible for benefits for those weeks. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

On January 29 and February 13, 2018, claimant candidly admitted to the Department that she did not want to work full time because she “[did not] want to lose social security benefits.” She also admitted that no doctor had restricted her from working full time based on her bi-polar condition. Claimant made these admissions before she knew that she was required to seek, among other things, full-time work to maintain her eligibility to receive unemployment insurance benefits. That claimant made such statements when she did not know they would make a difference in benefit eligibility is persuasive evidence that she did not seek, and was unwilling to accept full-time work, or any work that paid wages in an amount exceeding \$1180 per month, during the weeks at issue. In her testimony at hearing, claimant did not dispute that she made the admissions in question. Accordingly, viewing this record as a whole, more likely than not, claimant was not willing to seek or accept *all* full-time, part-time or temporary work opportunities during the weeks at issue, and under Department rules, was not available for work.

Claimant was not available for work during the weeks 05-18 through 10-18 and is ineligible to receive benefits for those weeks.

DECISION: Order No. 18-UI-105501 is affirmed.²

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

DATE of Service: April 25, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

² In Order No. 18-UI-105501, the ALJ made a clerical error in stating the period of ineligibility ran from January 29, 2018 to March 10, 2018, when week 05-18 began on January 28, 2018. Order No. 18-UI-105501 at 3. We corrected that error in our decision.