

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0347**

*Affirmed*  
*Late Request for Hearing Allowed*  
*Backdating Request Denied*  
*Ineligible*

**PROCEDURAL HISTORY:** On December 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate his claim to the week ending November 11, 2017 (decision # 150616). On January 10, 2018, decision # 150616 became final without claimant having filed a timely request for hearing. On January 24, 2018, claimant filed a late request for hearing on decision # 150616. On January 24, 2018, the Department served notice of another administrative decision concluding that claimant was not available for work from November 5, 2017 to November 25, 2017 (decision # 125211). On January 26, 2018, claimant filed a timely request for hearing on decision # 125211.

On February 1, 2018, ALJ Kangas issued Order No. 18-UI-102213, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by February 15, 2018. On February 15, 2018, claimant responded to the questionnaire. On February 26, 2018, the Office of Administrative Hearings mailed a letter notifying claimant that Order No. 18-UI-102213 was canceled and a hearing would be held.

On March 21, 2018, ALJ M. Davis conducted hearings on claimant's late request for hearing on decision # 150616 and on decision # 125211. On March 22, 2018, the ALJ issued Order No. 18-UI-105715, allowing claimant's late request for hearing on decision # 150616 and affirming decision # 150616, and Order No. 18-UI-105717, affirming decision # 125211. On April 5, 2018, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

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

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-105715 and 18-UI-105717. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0346 and 2018-EAB-0347).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusions that claimant's late request for hearing should be allowed and his backdating request must be denied are hereby **adopted**.

**FINDINGS OF FACT:** (1) On November 2, 2017, claimant was employed in The Dalles, Oregon. Continuing work was available to him at that time. On November 2, 2017, claimant notified his employer that he was quitting work the next day. Claimant quit his job because he had accepted a new job in Vermont, and needed time to pack his residence, settle his affairs, and relocate.

(2) On November 17, 2017, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits from November 5, 2017 through November 25, 2017, the weeks at issue. The Department denied claimant benefits for the weeks at issue.

(3) On November 5, 2017, claimant resided in White Salmon, Washington. Between November 5, 2017 and November 19, 2017, claimant packed his residence in preparation to move to Vermont. He continued to seek work in both Oregon and Vermont. On November 19, 2017, claimant began driving to Vermont. He arrived with his belongings on November 23, 2017.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant was not eligible for benefits 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 willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.* Because the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden to establish by a preponderance of the evidence that benefits should have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant alleged at the hearing and in his written argument that he was, at all relevant times, available to work in his normal labor market because he considered Oregon, Washington and Vermont, among other locations, all places in which he normally worked, and, therefore, all part of his normal labor market. Claimant does not, however, get to establish his own labor market. The Department's adjudicators are legally responsible for establishing individuals' labor markets, and the law defines a labor market as "that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage." OAR 471-030-0036(6)(a). Although individuals are not prohibited from seeking work outside their labor markets or in states other than the ones in which they reside, the definition of the "labor market" in which they must still be available for work as a condition of being eligible for unemployment benefits remains tied to the geographic area surrounding the individuals' permanent residences.

Putting aside that claimant did not establish he was available for work within his labor market during the weeks at issue, claimant did not dispute that during the weeks at issue he was unemployed and seeking

benefits because he quit a job with his regular employer, nor did he dispute that the primary reasons he quit work were because he needed time to pack his residence, settle his affairs and move across the country. If claimant had been willing and capable of performing any work in Oregon or Washington during the period of time in which he was occupied with packing for his cross-country move and the move itself, it would not make sense for him to have quit his job in order to accomplish those very things. Likewise, if claimant was willing and immediately capable of accepting and reporting to a job in Vermont during the weeks at issue, it does not make sense that claimant remained in Oregon during that time instead of going to Vermont. Claimant's actions in quitting a job two weeks prior to a planned cross-country move, while reasonable to allow himself time to pack and move across the country, belie his assertions that he was, in fact, willing to work in Oregon or Washington during the weeks at issue. Likewise, the fact that he needed to spend two weeks packing his belongings in Washington before moving to Vermont belies his assertions that he was capable of accepting or reporting to work in Vermont during that time. For those reasons, we conclude that claimant was not willing to work or capable of accepting and reporting for work in the areas in which he sought work during the weeks at issue. He was, therefore, not available for work, and not eligible to receive benefits, during those weeks.

**DECISION:** Order Nos. 18-UI-105715 and 18-UI-105717 are affirmed.

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

**DATE of Service:** May 2, 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](http://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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