

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0377

*Order Nos. 18-UI-106843 and 18-UI-106818 Affirmed
(Ineligible Weeks 07-18 through 11-18)*

PROCEDURAL HISTORY: On March 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks including February 11 through February 24, 2018 and was ineligible for benefits for that reason (decision # 171432). On March 6, 2018, the Department served notice of a second administrative decision concluding claimant was not available for work during the weeks including February 11 through February 24, 2018 due to a lack of child care and that the denial was ongoing until the reason for the denial had ended (decision # 171718). Claimant filed timely requests for hearing on both decisions.

On April 2, 2018, ALJ Scott conducted a consolidated hearing on decisions # 171432 and # 171718, during which she also took jurisdiction, with claimant's consent, over claimant's claims for benefits for the weeks including February 25 through March 17, 2018. On April 6, 2018, the ALJ issued Order No. 18-UI-106843, affirming decision # 171432, and Order No. 106818, modifying decision # 171718 as to the weeks at issue and concluding claimant was not available for work during the weeks including February 11 through March 17, 2018.¹

On April 16, 2018, claimant filed timely applications for review of Order Nos. 18-UI-106843 and 18-UI-106818 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-106843 and 18-UI-106818. For case-tracking purposes, this decision is being issued in duplicate (Appeals Board Decisions 2018-EAB-0377 and 2018-EAB-0378, respectively).

EVIDENTIARY MATTER: At hearing, claimant offered, and the ALJ admitted as Exhibit 1, without objection from the Department, a document that contained the content of OAR 414-205-0065(5), a

¹ During the April 2, 2018 hearing, the Department's witness stated that the Department denied benefits to claimant for the weeks including February 25 through March 17, 2018 for the same reasons identified in decision # 171718, which was an ongoing denial, and asked the ALJ to take jurisdiction over those weeks. Claimant did not object and the ALJ agreed to do so. Audio Record ~ 8:00 to 10:15.

regulation of the Early Learning Division of the Oregon Department of Education concerning “REGISTERED FAMILY CHILD CARE HOMES.” However, the ALJ failed to mark the document and in Order No. 18-UI-106818 stated “No exhibits were offered or admitted into evidence.” The ALJ’s failure to mark the exhibit and state in the order that the document claimant submitted at hearing was admitted into the record as Exhibit 1 appears to be a mere oversight. Because the document is readily identifiable from the discussion at hearing and, having been discussed, is necessary to complete the record under OAR 471-041-0090(1) (October 29, 2006), EAB has marked the document as “Exhibit 1” and admits it into the record. A copy of Exhibit 1 is being served to each party along with this order. Any party who objects to our admitting Exhibit 1 into evidence must submit such objection to this office in writing, setting forth the basis of the objection within ten days of our mailing this order. Unless such objection is received and sustained, Exhibit 1 will remain in the record. Although Exhibit 1 has been included in the record and reviewed, it is not relevant to our decision and does not affect the outcome of these cases because the regulation in question does not concern eligibility for unemployment insurance benefits, which is a separate matter.

EAB considered the entire hearing record and claimant’s written argument in reaching these decisions. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.

DECISION: Order Nos. 18-UI-106843 and 18-UI-106818 are affirmed.

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

DATE of Service: May 15, 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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