

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0418

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from March 4, 2018 to March 10, 2018 (decision # 95327). Claimant filed a timely request for hearing. On April 18, 2018, ALJ Seideman conducted a hearing and issued Order No. 18-UI-107614, affirming the Department's decision. On April 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed a weekly claim for unemployment insurance benefits from March 4, 2018 to March 10, 2018, the week at issue.

(2) During the week at issue, claimant sought work as a welder-fabricator. In his labor market, that type of work was performed all hours and days.

(3) On March 8, 2018, claimant was booked on criminal charges at the Washington County Courthouse between 10:22 a.m. and 10:57 a.m. The courthouse was a county facility in which claimant was fingerprinted and photographed. During the 35 minute booking proceedings claimant was not permitted to leave the courthouse.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was not available for work during the week at issue.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). OAR 471-030-0036(3)(f)(B) provides that for the purposes of that law, an individual is not available for work in any week claimed if, during the week, the individual "is incarcerated during *any* days or hours customary for the type of work the individual is seeking." (Emphasis added.) "Incarcerated" means "in custody at a . . . county . . . law enforcement or correctional facility." OAR 471-030-0036(3)(f)(B)(i).

There is no factual dispute in this case that claimant was in custody in a county law enforcement facility for 35 minutes on March 8th, during which time he was not permitted to leave. Nor is there any dispute that the 35 minute period between 10:22 a.m. and 10:57 a.m. occurred during the usual hours and days customary for the type of work claimant sought during the week at issue. Claimant was, therefore, not available for work during that week.

Claimant argued that it was not reasonable to consider him unavailable for work during the entire week at issue because of a 30 minute period in custody, during which he was not in jail, and that to do so was “discrediting” all the work searches he did earlier in the week. *See* Audio recording at ~ 10:00-11:00. The rule is clear, though, that incarcerated includes being in custody, not just being put in jail, and that being in custody for *any* of the days and hours customary for the type of work he sought means the individual is not considered “available” for work during the entirety of the week in which the incarceration happened. That is what happened in claimant’s situation, and, therefore, we must conclude that claimant was not available for work.

Claimant is not eligible for benefits during the week at issue.

DECISION: Order No. 18-UI-107614 is affirmed.

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

DATE of Service: May 24, 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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