

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0733

Affirmed
Ineligible Weeks 23-18 to 28-18

PROCEDURAL HISTORY: On June 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from June 3, 2018 to June 16, 2018 (decision # 161218). Claimant filed a timely request for hearing. On July 17, 2018, ALJ Seideman conducted a hearing, and on July 19, 2018 issued Order No. 18-UI-113398, concluding claimant was not available for work from June 3, 2018 to July 14, 2018. On July 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 4, 2018, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits for the weeks of June 3, 2018 to July 14, 2018 (weeks 23-18 to 28-18), the weeks at issue. The Department did not pay him benefits for the weeks at issue.¹

(2) During the weeks at issue claimant sought work as a technician and repair worker. Claimant's labor market included Portland, Oregon, Vancouver, Washington, and surrounding areas. In claimant's labor market, technician and repair work were customarily performed all days from 6:00 a.m. to 11:00 p.m.

(3) Claimant did not have a regular childcare provider during the weeks at issue. Claimant's ex-wife was able to provide childcare around her Monday through Friday 8:00 a.m. to 6:00 p.m. work schedule. Claimant's father worked variable hours in construction, but was able to provide childcare when he was not working. Claimant's mother was able to provide childcare around her 6:00 a.m. to 6:00 p.m. work schedule. Claimant's ex-wife's parents were available to provide childcare during unspecified hours. Claimant did not know how much childcare for his children would cost, but had room on his credit card to pay for childcare if needed. He had not looked into other childcare options, including government programs, but was willing to look into them if he obtained a job and needed childcare.

¹ We take notice of this fact, which is contained 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 in writing, 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.

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

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) (April 1, 2018). 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.*

Where the Department has paid benefits to a claimant and seeks to recover them, the Department has the burden to prove that benefits should not have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). By extension of that principle, where the Department has initially denied benefits to a claimant, the claimant has the burden to prove that benefits should have been paid. In this case, the Department denied claimant benefits for all of the weeks at issue. Claimant therefore has the burden to show that he was eligible for benefits during all the weeks at issue.

Claimant testified in this case that “when I find work, I’ll have childcare,” “I’ll have childcare available when I find work,” childcare was not an “obstacle,” and that “childcare is not an issue, it never has been, it won’t be, it wasn’t from the get-go.” *See e.g.* Audio recording at ~ 10:40, 12:00, 12:50, 14:50, 15:30. However, he also admitted that he had not secured childcare for his children in the event he was hired to work during the weeks at issue, he did not know what his childcare options were, and he did not know how much childcare would cost. His assertions that he would secure childcare and was able to pay for it were therefore not supported by the evidence he provided at the hearing. Although claimant testified that he had a support system in place, and he no doubt did, the individuals he would primarily rely upon for childcare, including his parents and ex-wife, all typically worked during the majority of the days and hours customary for the type of work claimant sought during the weeks at issue. The lack of an available support system during the customary days and hours of the types of work claimant sought suggests that it is not more likely than not that those individuals could reliably provide childcare for claimant’s children during the weeks at issue in this case had claimant received a job offer.

Claimant has the burden to prove that it is more likely than not he had childcare for his children during the weeks at issue, such that he would have been capable of reporting to any suitable work opportunities that arose during those weeks. Although the record shows that claimant subjectively intended to be capable of reporting to work despite his need so provide or secure childcare for his children during those weeks, claimant did not objectively prove that he did, in fact, have childcare in place so that he would have been capable of reporting to work if it was offered. Claimant’s lack of specific childcare arrangements during the weeks at issue therefore rendered him unavailable for work for purposes of this unemployment insurance benefit eligibility case. Claimant was not available for work during the weeks at issue, and is therefore not eligible for benefits during those weeks.

DECISION: Order No. 18-UI-113398 is affirmed.

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

DATE of Service: August 23, 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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