

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0762

Affirmed
Ineligible May 27, 2018 to July 7, 2018

PROCEDURAL HISTORY: On June 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from May 27, 2018 through June 2, 2018 (decision # 160600). Claimant filed a timely request for hearing. On July 19, 2018, ALJ Seidman conducted a hearing and issued Order No. 18-UI-113484, concluding claimant was not available for work from May 27, 2018 through July 7, 2018. On August 2, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a letter from his wife's medical provider regarding her medical condition. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). EAB infers that claimant did not receive the letter until after the hearing and was thus unable to provide it before the hearing. Because it is relevant to and material to EAB's determination, EAB considered the new information in reaching this decision.

FINDINGS OF FACT: (1) On May 30, 2018, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits for the weeks from May 27, 2018 through July 7, 2018 (weeks 22-18 through 27-18), the weeks at issue. The Department did not pay claimant benefits for any of the weeks at issue.

(2) During the weeks at issue, claimant sought manufacturing work. His labor market was McMinnville, Oregon. In claimant's labor market, the customary days and hours for manufacturing work were all days, all shifts.

(3) During all the weeks at issue, claimant was only willing to work day shifts because he needed to be with his wife, who had severe anxiety and relied on claimant to ease her anxiety at night. Claimant had no other resource available to care for his wife at night.

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

To be eligible to receive benefits, an unemployed individual 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 suitable work opportunities throughout the labor market during all of the usual hours and days of the week customary for the work being sought, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.* By logical extension of the holding in *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) where, as here, claimant was not paid benefits or given waiting week credit during the weeks at issue, claimant carries the burden to show by a preponderance of the evidence that he was eligible for benefits for those weeks.

Claimant was not willing to work during the night shift during the weeks at issue because he needed to be with his wife to ease her anxiety. Because manufacturing work is customarily performed on all days and during all hours, including at night, claimant was not willing to work during all of the usual hours and days of the week for the work he sought during the weeks at issue. There is no exception to the requirement that an individual be available to work during all the usual hours and days of the week customary for the occupation being sought that would permit claimant to limit his availability to work during certain shifts based on his need to care for his disabled wife. Therefore, by limiting the shifts he would accept during the weeks at issue, claimant imposed a condition that substantially reduced his opportunity to return to work at the earliest possible time. Accordingly, claimant was not available for all suitable work during weeks 22-18 through 27-18 and is ineligible for benefits for those weeks.

DECISION: Order No. 18-UI-113484 is affirmed.

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

DATE of Service: September 4, 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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