

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0809

Affirmed
Ineligible Beginning Week 25-18

PROCEDURAL HISTORY: On June 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the week of June 3, 2018 through June 9, 2018 (decision # 94955). Claimant filed a timely request for hearing, which stated that she was not available to appear for a hearing on several dates, including on July 26, 2018. On July 13, 2018, the Office of Administrative Hearings (OAH) served a notice scheduling a hearing for July 26, 2018 on claimant's request for hearing on decision # 94955. On July 26, 2018, ALJ Snyder convened a hearing at which claimant did not appear and orally dismissed claimant's request for hearing on decision # 94955 due to claimant's failure to appear, but did not issue a written order of dismissal. On July 27, 2018, without cancelling or vacating the ALJ's oral dismissal of claimant's request for hearing on decision # 94955 and for reasons not explained, OAH served a notice scheduling an August 13, 2018 hearing on claimant's request for hearing on decision # 94955. On August 13, 2018, ALJ Snyder conducted a hearing, and on August 17, 2018 issued Order No. 18-UI-115198, concluding that claimant was available for work during the weeks of June 3, 2018 through June 16, 2018 and was not available for work during the weeks of June 17, 2018 through July 28, 2018. On August 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

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 conclusion that claimant was available for work during the weeks of June 3, 2018 through June 16, 2018 are **adopted**.

FINDINGS OF FACT: (1) On June 7, 2018, claimant filed a valid initial claim for benefits. Claimant claimed benefits for the weeks of June 17, 2018 through July 28, 2018 (weeks 25-18 through 30-18), the weeks at issue.

(2) While claiming benefits, claimant was seeking warehouse work or work in the electrical field. The usual days and hours customary for a warehouse worker in claimant's labor market was all days, all shifts.

(3) On June 19, 2018, which was during week 25-18, claimant began attending a pre-apprenticeship training program for individuals who desired skills and certifications to assist them in entering the construction trades. The training program was intensive and classes were held on Tuesdays, Wednesdays and Thursdays from 6:30 a.m. until 4:00 p.m. The pre-apprenticeship training program was scheduled to end on August 23, 2018.

(4) During the weeks at issue, when claimant completed an application that allowed her to state the full-time hours she wanted to work, she would state that she was applying for swing shift and graveyard shift jobs. Claimant did not indicate day shift because those were hours when she attended the training program. Claimant would indicate that she was willing to work day shift hours only if those day shifts were on Sundays, Mondays, Fridays and Saturdays, which were days on which she did not participate in the pre-apprenticeship program.

(5) During the weeks at issue, claimant was not willing to accept jobs with work during day shifts on Tuesday, Wednesdays and Thursdays because it would conflict with her participation in the pre-apprenticeship training program. Claimant was not willing to withdraw from the pre-apprenticeship training program to accept a job that had hours that conflicted with those of the training program.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks of July 17, 2018 through July 28, 2018.

To be eligible to receive benefits, unemployed individuals 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) (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 during all of the days and hours customary for the type of work the individual is seeking, and must refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.*

At times during her testimony, claimant would appear to broadly state that she was willing to accept work that would conflict with her participation in the pre-apprenticeship training program. Audio at ~24:47, ~25:36, ~26:08. However, upon closer questioning, claimant would then agree that she was not willing to accept that work if its hours conflicted with the pre-apprenticeship training program. Audio at ~25:07, ~26:08, ~26:27~28:35, ~29:12, ~32:25. From the insistence with which claimant stated her position, we infer that she also was not willing to drop out of the training program to take accept a job that required her to work on days when she otherwise would be attending the program. Based on claimant’s testimony, she likely was unwilling to work day shifts on Tuesdays, Wednesdays and Thursdays, which were shifts customary for the type of work she was seeking, due to attendance in the pre-apprenticeship training program. As a result of this limitation, claimant was not available for work because she was imposing a condition on the type of work she would accept, which limited her opportunity to return to work at the earliest possible time.

Claimant was not available for work during the weeks of June 17, 2018 through July 28, 2018 and is ineligible to receive benefits during those weeks.

DECISION: Order No. 18-UI-115198 is affirmed.

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

DATE of Service: September 21, 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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