

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0817

Adopted
Late Request for Hearing Allowed
Ineligible

PROCEDURAL HISTORY: On May 22, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from April 29 through May 19, 2018 (decision # 82240). On June 11, 2018, decision # 82240 became final without claimant having filed a timely request for hearing. On July 23, 2018, claimant filed a late request for hearing. On July 25, 2018, ALJ Kangas issued Order No. 18-UI-113755, dismissing claimant's request for hearing as untimely without a showing of good cause subject to his right to renew the request by responding to an appellant questionnaire by August 8, 2018. On July 30, 2018, claimant filed a timely response to the appellant questionnaire. On July 31, 2018, the Office of Administrative Hearings (OAH) cancelled Order No. 18-UI-113755, and on August 1, 2018 scheduled a hearing for August 16, 2018. On August 16, 2018, ALJ Logan conducted a hearing, and on August 17, 2018 issued Order No. 18-UI-115183, allowing claimant's late request for hearing on decision # 82240 and modifying that decision by concluding that claimant was not available for work from April 29, 2018 through August 11, 2018. On August 22, 2018, claimant filed an application for review of Order No. 18-UI-115183 with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record and the written arguments claimant submitted on August 22 and 31, 2018. In his written arguments, claimant asked that his labor market be reduced so that he is capable of reporting for any suitable opportunities within his labor market, and therefore available for work and eligible for benefits. However, ORS 657.730(a) defines "labor market area" as an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence, as identified in accordance with criteria used by the Bureau of Labor Statistics of the United States Department of Labor in defining such areas, or similar criteria established by the Department. *Id.* OAR 471-030-0036(a) states that an individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage, as defined by employees of the adjudicating Department office. EAB has no authority to reduce the size of claimant's labor market, as defined by the Department, to make him available for work and eligible for benefits.

On *de novo* review and pursuant to ORS 657.275(2), the Order under review is **adopted**.

DECISION: Order No. 18-UI-115183 is affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, 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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