

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1354

Affirmed
Benefits Are Not Payable

PROCEDURAL HISTORY: On June 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits during the recess period between two academic terms (decision # 105056). Claimant filed a timely request for hearing. On July 22, 2014, ALJ Frank conducted a hearing, and on July 30, 2014 issued Hearing Decision 14-UI-22483, modifying the Department's decision and concluding claimant was not eligible for benefits during the entire recess period between the employer's two academic terms, June 15, 2014 through September 20, 2014 (weeks 25-14 through 38-14). On August 8, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, the outcome of this decision would remain the same for the following reasons. In her written argument claimant asked "why a 12-month employee would not get benefits makes no sense to me, **perhaps** that is what the law says?" (Emphasis in original). OAR 471-030-0074(2) is clear: the provisions of ORS 657.167 and 657.221 apply irrespective of whether or not the individual performed services only during an academic year or in a year-round position. The law also applies even though claimant worked in a non-instructional position. As to claimant's argument regarding her separation from the employer, the ALJ correctly opined that under OAR 471-030-0075(4) reasonable assurance cannot be ended or abated by any unilateral action of the individual. A decision to quit work, **even for good cause**, and even if the employer accepts the resignation, does not end or abate reasonable assurance. (Emphasis added). Therefore, even though claimant had "good cause" for leaving work under Employment Department law, and even if her decision to leave work was necessary given the circumstances she described, ORS 657.167 and 657.221 apply, and benefits are not payable to claimant during the summer recess period.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-22483 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: August 18, 2014

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 website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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