

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0996

Reversed & Remanded

PROCEDURAL HISTORY: On July 25, 2016, the Oregon Employment Department (the Department) served notice of an amended administrative decision concluding that claimant was not eligible for benefits during the recess period between academic years (decision # 74245). Claimant filed a timely request for hearing. On August 16, 2016, ALJ Shoemake conducted a hearing, and on August 22, 2016, issued Hearing Decision 16-UI-66067, affirming the administrative decision. On August 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From May 11, 2015 until January 15, 2016, Eastern Oregon University, an institution of higher education, employed claimant as human resources director. Claimant voluntarily left work for the employer on January 15.

(2) At Eastern Oregon University, the recess period between academic years 2015-2016 and 2016-2017 began on June 16, 2016 and ends on September 23, 2016. Had claimant not quit her job, she would have had a reasonable assurance that she would continue her employment with the university for the 2016-2017 academic year. Audio recording at 31:13.

(3) On June 28, 2016, claimant filed an initial claim for unemployment benefits. Her claim was determined to be valid and a weekly benefit amount of \$567 was established. Claimant's base year for her claim was January 1 through December 31, 2015. Claimant's claim for unemployment benefits was based entirely on earnings from Eastern Oregon University; she had no earnings from an employer other than the university during her base year.

(4) Claimant claimed benefits for weeks 26-16 through 32-16 (June 26 through August 13, 2016), the weeks at issue.

CONCLUSION AND REASONS: Hearing Decision 16-UI-66067 is reversed, and this matter remanded for further development of the record.

The Department determined that claimant was *monetarily* eligible for benefits, based on the total amount of her base year wages from her base-year employers and established her weekly benefit amount at \$567

per week. Claimant seeks benefits based on her work as human resources director at Eastern Oregon University, an educational institution. When a claim for benefits is based on base-year wages from an educational institution or institution of higher learning, ORS 657.167 or ORS 657.221 will apply and require a reduction of benefits under certain prescribed conditions. OAR 471-030-0074 (January 29, 2007). The ALJ determined that ORS 657.167 applied to claimant's situation; that statute provides, in relevant part:

657.167 (1) Benefits based on service in an instructional, research or principal administrative capacity for an educational institution or institution of higher education shall be payable to an individual in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or, when an agreement provides instead for a similar period between two regular terms...if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution in the second of such academic years or terms...

In Hearing Decision 16-UI-66067, the ALJ found that claimant was employed during the 2015-2016 year by Eastern Oregon University, an educational institution, that she quit her job in January 2016, and that she had a reasonable assurance that she could have continued working for the employer during the 2016-2017 academic year had she not voluntarily left work. The ALJ then concluded that under ORS 657.167, claimant was ineligible to receive benefits during the weeks at issue because those weeks fell "during the period between two academic years." Hearing Decision 16-UI-66067 at 3. The ALJ failed to make an inquiry sufficient to determine whether ORS 657.167 is applicable to claimant's circumstances, however. Hearing Decision 16-UI-66067 is therefore reversed, and the matter remanded for further development of the record.

As noted above, ORS 657.167 applies to reduce benefits to individuals who perform service in "an instructional, research, or principal administrative capacity" for educational institutions. ORS 657.221, as amended by the 2016 legislature, applies to other types of individuals employed by educational institutions and requires a reduction of benefits under circumstances different from those in ORS 657.167. ORS 657.221 (Chapter 15 Oregon Laws 2016 (SB 1534)) provides, in relevant part:

657.221(1)(a) Benefits based on service in other than an instructional, research or principal administrative capacity for an educational institution or institution of higher education shall be payable to an individual in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter.

(b) Notwithstanding paragraph (a) of this subsection, benefits shall not be paid on the basis of such services for any week of unemployment that commences during a period between two successive academic years or terms if the individual performs the services in the first academic year or term and there is a reasonable assurance that the individual will perform the services in the second academic year or term for any institution; ...

(5) Subsections (1) and (3) of this section do not apply to a claim for benefits based on the performance of services described in subsection (1) of this section if the individual filing the claim voluntarily left work, with good cause, with the institution for which the

services were performed. Benefits payable on the basis of services described in subsection (1) of this section shall be denied to an individual for any week that commences during an established and customary vacation period.¹

ORS 657.167 applies to claimant's circumstances if she performed services for Eastern Oregon University in an "instructional, research or principal administrative capacity," and ORS 657.221 applies to claimant's circumstances if she performed services for the university in a role other than in an "instructional, research or principal administrative capacity." The ALJ, however, failed to ask claimant any questions about the work she performed for Eastern Oregon University. On remand, the ALJ must conduct an inquiry sufficient to determine: (1) whether ORS 657.167 or ORS 657.221 applied to her situation, and (2) whether claimant had good cause for voluntarily leaving work for the university.

In regard to claimant's job with Eastern Oregon University, the ALJ should ask what duties claimant performed in her role as human resources director, what position claimant held in the university's organizational structure, and who supervised or oversaw claimant's work. The ALJ should also ask whether her position required any professional certifications or qualifications, and if so, what certifications or qualifications claimant possessed. In addition, the ALJ should ask any other questions necessary to determine whether claimant performed services in an "instructional, research or principal administrative capacity" for the university.²

Finally, the ALJ must question claimant about the circumstances of her work separation to determine whether she had good cause for voluntarily leaving her work for the university.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether ORS 657.167 or ORS 657.221 applied to claimant's circumstances, and whether she had good cause for voluntarily leaving work for Eastern Oregon University, Hearing Decision 16-UI-66067 is reversed, and this matter remanded for development of the record.

¹ OAR 471-030-0075(4) (January 29, 2007) states that for the purposes of ORS 657.167 and ORS 657.221, "[r]easonable 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." To the extent this administrative rule conflicts with ORS 657.221(5), the statute prevails.

² We note that the statutes contain no definition of the term "principal administrative capacity." The Oxford online dictionary, however, defines "administrative" as "relating to the running of a business, organization, etc." www.oxforddictionaries.com. In addition, we take official notice of Section 536 (revised 8/2/02) from the Department's "Comprehensive Handbook of Unemployment Knowledge," which lists the following examples of employees serving in a "principal administrative" capacity for purposes of ORS 657.167: "people employed as officers of the institution such as the president, the board of directors, business managers, principals, deans, associate deans, university public relations directors, comptrollers, development officers, chief librarians, [and] counselors." Any party that objects to our taking notice of this information must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, the noticed information will remain part of the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-66067 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 16-UI-66067 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 2, 2016

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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