

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1005**

*Modified*  
*Eligible Week 24-16*  
*Not Eligible Weeks 25-16 to 38-16*

**PROCEDURAL HISTORY:** On June 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding benefits were not payable to claimant during the recess period between the 2015-2016 and 2017-2018 academic years (decision # 113547). Claimant filed a timely request for hearing. On July 19, 2016, ALJ Vincent conducted a hearing, on July 27, 2016 issued Hearing Decision 16-UI-64561, and on August 12, 2016 issued amended Hearing Decision 16-UI-65548, concluding claimant was not eligible for benefits from June 12, 2016 to June 18, 2016. On August 30, 2016, the Department filed an application for review of Hearing Decision 16-UI-65548 with the Employment Appeals Board (EAB).

EAB considered the Department's argument when reaching this decision.

**EVIDENTIARY MATTER:** In Hearing Decision 16-UI-65548, the ALJ stated that Exhibit 1 was admitted into evidence. A review of the record shows that no exhibits were admitted into evidence in this case. EAB considered the record documents (administrative decision # 113547, request for hearing, notice of hearing), audio recording of the July 19, 2016 hearing and the Department's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for benefits effective the second quarter of 2016. The base year for a claim filed during that quarter includes January 1, 2015 to December 31, 2015.

(2) Claimant's base year employers included Umpqua Community College (UCC) and Cradar Enterprises, Inc. The Department determined that claimant had a valid claim for unemployment

insurance benefits based on his combined base year employment with a weekly benefit amount of \$404.<sup>1</sup> UCC is an educational institution for purposes of unemployment insurance. Cradar Enterprises, Inc. is not an educational institution. Claimant's base year work and earnings from Cradar Enterprises, Inc., considered alone, were not sufficient to qualify him for a valid unemployment insurance claim.

(3) UCC's school recess period began June 13, 2016 and ended September 23, 2016. Claimant seeks benefits for the period of June 12, 2016 to September 24, 2016 (weeks 24-16 to 38-16).

(4) During the 2015-2016 academic year, claimant worked as a CDL instructor for UCC. UCC notified claimant that he was expected to return to work in the same position in the 2016-2017 academic year. In both the 2015-2016 and 2016-2017 academic years, the quantity of work available to claimant depended on student enrollment. The types of classes claimant instructed did not observe UCC's summer recess periods, and could, potentially, be scheduled year round.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that benefits are not payable to claimant during the period between two academic years. However, we conclude that benefits are payable to claimant for the week of June 12, 2016 to June 18, 2016 (week 24-16) because it did not "commence during" the summer recess period, and conclude that claimant's period of ineligibility includes June 19, 2016 through September 24, 2016 (weeks 25-16 to 38-16), which encompasses the entirety of the recess period at issue.

ORS 657.167 requires a reduction in benefits based on services performed for educational institutions under certain prescribed conditions. Claimant seeks benefits based on wages earned while performing professional services for UCC, which is an educational institution as defined by ORS 657.010(6).<sup>2</sup> Therefore, ORS 657.167 limits when those benefits may be paid, if the prescribed conditions are satisfied.

Under OAR 471-030-0074, however, the Employment Department exempts certain individuals from the reduction in benefits required by ORS 657.167 and ORS 657.221:

(1) ORS 657.167 and 657.221 apply only when the individual claiming benefits was not unemployed as defined by ORS 657.100 in the period immediately preceding the holiday, vacation or recess period. Where the week(s) claimed commenced during a holiday or vacation period, the relevant period is the week immediately prior to the holiday or vacation period. Where the week(s) claimed commenced during a customary recess period between academic terms or years, the relevant period is the academic year or term immediately prior to the recess period.

(2) The provisions of ORS 657.167 and 657.221 apply irrespective of whether or not the

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<sup>1</sup> The Department found in decision # 113547 that claimant was "employed" by UCC during the 2015-2016 academic year, and we infer from the Department witness's testimony about claimant's "employment" that the Department's testimony that claimant was "employed" means that claimant earned more than \$404 working for UCC during at least one week of the 2015-2016 academic year.

<sup>2</sup> Formerly ORS 657.010(16). See *Richard E. Hunt* (Employment Appeals Board, 05-AB-1742, January 31, 2006).

individual performed services only during an academic year or in a year-round position.

Because claimant seeks benefits for weeks 24-16 to 38-16, the relevant period is the 2015-2016 academic year of UCC.<sup>3</sup> ORS 657.100 provides that an individual is unemployed in any week in which the individual earns less than his weekly benefit amount. Because claimant was employed during at least one week of the 2015-2016 academic year, he is not exempted by OAR 471-030-0074 from the provisions of ORS 657.167, and benefits may not be paid if the prescribed conditions are satisfied.

The first condition that must be met before ORS 657.167 may be applied is that the benefits sought must be for a week that commenced during a customary vacation period, holiday or summer recess observed by the educational institution for which the services were performed during the base year.<sup>4</sup> UCC's summer recess period between its 2015-2016 and 2016-2016 academic years began on June 13, 2016 and ended on September 23, 2016. The first week claimant claimed benefits (week 24-16) began June 12, 2016; therefore, that week did not "commence during" the recess period. Consequently, ORS 657.167 does *not* apply with respect to claimant's claim for that week, and benefits are payable to claimant for that week if he is otherwise eligible and not disqualified. Each of the remaining weeks potentially at issue, June 19, 2016 through September 24, 2016 (weeks 25-16 through 38-16) did "commence during" the recess period, and the first condition is satisfied with respect to each of those weeks.

The second condition is that claimant must have performed services for one or more educational institutions during the academic year immediately prior to the recess period. Claimant worked as a CDL instructor for UCC. The second condition is satisfied.

The third condition that must be satisfied is that claimant must have had "reasonable assurance" of continuing work in such capacity in the 2016-2017 academic year. "Reasonable assurance" means a written contract, written notification or any agreement, express or implied, that the employee will perform services immediately following the recess.<sup>5</sup> In order to establish "reasonable assurance", the work offered must be 1) in the same or similar capacity, and 2) on economic terms and conditions not "substantially less" than the economic terms and conditions of the work performed during the previous academic year.

There is no dispute in this case that claimant had worked as a CDL instructor in the 2015-2016 academic year, and he agreed he was expected to continue working for UCC in the same position and on the same terms in the 2016-2017 academic year. Claimant argued that he should not be subject to the between terms reduction because his work was based on student enrollment. However, claimant's work for UCC was always based on student enrollment; the fact that claimant might or might not have been called to teach at any particular time was not a change in the quantity, terms or conditions of his work. Claimant also argued that he should not be subject to the between terms reduction because he worked year-round

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<sup>3</sup> OAR 471-030-0074 (January 29, 2007). See also ORS 657.100(1); *Hutchinson v. Employment Division*, 126 Or App 717 (1994) and *Salem-Keizer School District #24J v. Employment Department*, 137 Or App 320 (1995).

<sup>4</sup> ORS 657.167 and ORS 657.221.

<sup>5</sup> See OAR 471-030-0075 (January 29, 2007).

and did not observe a summer recess. However, OAR 471-030-0074(2) specifically states that the between terms reduction in benefits applies "irrespective of whether or not the individual performed services only during an academic year or in a year-round position." Based on the totality of the circumstances, we conclude that claimant had reasonable assurance that he would perform services immediately following the recess period in the same or similar capacity as the academic year preceding the recess period. The third condition is, therefore, satisfied.

The prescribed conditions of ORS 657.167 have been satisfied with respect to benefits based on claimant's base year wages from educational institutions. Accordingly, those benefits are subject to the between terms reduction, and benefits are not payable to claimant for weeks 25-16 through 38-16, which commenced during the recess period between UCC's 2015-2016 and 2016-2017 academic years. As noted herein, however, benefits based on claimant's claim for week 24-16 are *not* subject to the reduction because the week did not commence during the recess period.

**DECISION:** Hearing Decision 16-UI-65548 is modified, as outlined above.

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

**DATE of Service: September 29, 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](http://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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