

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

*Affirmed*  
*Benefits are Payable*

**PROCEDURAL HISTORY:** On August 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding benefits were payable to claimant during the recess period between two academic years (decision # 93906). The employer filed a timely request for hearing. On September 25, 2017, ALJ S. Lee conducted a hearing, and on September 27, 2017 issued Hearing Decision 17-UI-93387, affirming the Department's decision. On October 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. EAB considered the employer's argument and the entire hearing record.

**FINDINGS OF FACT:** (1) On June 20, 2017, claimant filed an initial claim for benefits. An initial claim filed during that quarter has a base year from April 1, 2016 through March 31, 2017.

(2) One of claimant's two base year employers was Linn Benton Community College (LBCC), an educational employer. Claimant did not have a monetarily valid claim based solely on his wages from LBCC. The Department determined that claimant had a monetarily valid claim for benefits based on his total base year wages and that his weekly benefit amount was \$138.

(3) Claimant worked only one hour per week as a part-time instructor, at \$25 per hour, during the 2016-2017 academic year. He did not earn more than his weekly benefit amount of \$138 from LBCC during any week of the 2016-2017 academic year.

(4) Claimant and LBCC both expected claimant to work for LBCC as a part-time instructor during the 2017-2018 academic year.

(5) The recess period between the 2016-2017 and 2017-2018 academic years for LBCC began June 19, 2017 and ended September 22, 2017 (weeks 25-17 through 38-17). Claimant claimed benefits for the

weeks including July 16 through August 19, 2017 (weeks 29-17 through 33-17) and August 27 through September 9, 2017 (weeks 35-17 through 36-17), the weeks at issue.

**CONCLUSIONS AND REASONS:** Benefits are payable to claimant during the summer recess period between the 2016-2017 and 2017-2018 academic years.

The Department determined claimant had a monetarily valid claim for benefits and a weekly benefit amount of \$138 based on his base year wages. However, ORS 657.167 provides that unemployment insurance benefits payable to an otherwise qualified individual may be reduced during school recess periods *if the benefits are based on wages from services performed for an educational institution.* (Emphasis supplied). It is undisputed that the weeks at issue commenced during a summer recess observed by LBCC, claimant performed services for at least one educational institution during the academic year immediately preceding the recess, and claimant had reasonable assurance that he would perform work at LBCC in 2017-2018 in a similar capacity as he had prior to the recess period. *See* ORS 657.221, OAR 471-030-0075 (January 29, 2007).

However, the reduction in benefits only applies when the individual was not “unemployed,” as that term is defined at ORS 657.100 in the period immediately preceding the recess. OAR 471-030-0074(1) (January 29, 2007). 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 seeks benefits for weeks beginning July 16, 2017, the period immediately preceding the recess is the LBCC 2016-2017 academic year. Claimant did not earn at least \$138, or an amount equal to his weekly benefit amount, from an educational employer in any one week during the 2016-2017 academic year. Therefore, claimant was unemployed in the period immediately preceding the recess period at issue, and he is exempted by OAR 471-030-0074(1) from the reduction in benefits.

The employer argued at hearing, and in its written argument, that it was error to interpret OAR 471-030-0074(1) as requiring the claimant to be “not unemployed” with respect to the educational institution. Audio Record at 27:19-30:34; Employer’s Written Argument. We disagree. ORS 657.167(1) refers to benefits that are “based on wages from services performed for an educational institution.” OAR 471-030-0074(1) interprets that law, and the Department’s and ALJ’s interpretation, that the “not unemployed” provision refers to “not unemployed [in an educational institution]” is reasonable given that the laws and rules at issue are strictly related to service for an educational institution. The employer argues that “to limit [the statute] to applying to the educational employer creates odd results.” Employer’s Written Argument at 2. However, to interpret ORS 657.100 as allowing \$25 per week in educational wages to prevent claimant from receiving unemployment insurance based primarily on non-educational wages would be an odd result.

Accordingly, benefits are payable to claimant for the weeks he claimed during the 2016-2017 summer recess period, including July 16 through August 19, 2017 (weeks 29-17 through 33-17) and August 27 through September 9, 2017 (weeks 35-17 through 36-17).

**DECISION:** Hearing Decision 17-UI-93387 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service: November 7, 2017**

**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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