

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0786**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 6, 2018, 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 years based on non-school wages and hours of work in the base year (decision # 95947). Claimant filed a timely request for hearing. On August 2, 2018, ALJ Frank conducted a hearing, and on August 8, 2018 issued Order No. 18-UI-114570, concluding claimant was not eligible to receive benefits for the recess period, June 17, 2018 through September 1, 2018. On August 13, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Order No. 18-UI-114570 is reversed and this matter remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

This matter comes before EAB to determine whether claimant is subject to a reduction in benefits under ORS 657.167 and ORS 657.221 and for what period. In the 2017-2018 academic year, claimant worked as a full time groundskeeper for Lincoln County School District. On March 16, 2018, claimant quit work to accept an offer of other work. Claimant filed an initial claim for benefits on April 30, 2018, with a base year that began on January 1, 2017 and ended on December 31, 2017. The employer was claimant's only base year employer. Claimant had a valid claim for weekly benefits in the amount of \$438, and during the 2017-2018 academic year his earnings exceeded that amount in at least one week. Claimant sought benefits for the weeks from June 17, 2018 through September 1, 2018 (weeks 25-18 through 35-18).

ORS 657.221, which applies to services performed for educational institutions by individuals such as claimant in other than an instructional, research or principal administrative capacity, limits when those benefits may be paid, under prescribed conditions are satisfied. OAR 471-030-0074 (April 29, 2018) exempts certain individuals from the reduction in benefits required by ORS 657.221. That rule provides in relevant part that ORS 657.221 applies only when the individual claiming benefits was not unemployed as defined by ORS 657.100 during the relevant period in the preceding academic year. The provisions of ORS 657.221 apply irrespective of whether or not the individual performed services only during an academic year or in a year-round position. 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 earned more than his weekly benefit amount during at least one week of the 2017-2018 academic year, he is not exempted by OAR 471-030-0074 from the provisions of ORS 657.221.

The first condition that must be met before the reduction in benefits required by ORS 657.221 may be applied is that the benefits sought must be for a week that commenced during a customary summer recess observed by the educational institution for which the services were performed during the base year. ORS 657.167 and ORS 657.221. Here, the applicable employer summer recess was from June 18, 2018 through August 31, 2018. Claimant claimed benefits for the weeks including June 17, 2018 through September 1, 2018, which commenced during that recess period. Therefore, the first condition is satisfied.

The second condition that must be met is that claimant must have performed services for one or more educational institutions during the academic year immediately prior to the recess period. ORS 657.167 and ORS 657.221. Here, claimant worked as a groundskeeper for the employer, an educational institution, during the 2017-18 academic year. The second condition is satisfied.

The third condition that must be satisfied is that claimant must have had “reasonable assurance” of continuing work in the relevant academic year. OAR 471-030-0074. Here, the relevant academic year was 2018-2019. OAR 471-030-0075(4) (April 29, 2018) provides that reasonable assurance exists where there is an offer of employment for the relevant academic year for the same or similar work, except that “an individual who voluntarily leaves work for good cause, as defined under OAR 471-030-0038, does not have reasonable assurance with the employer from whom the person left work.” In other words, whether an individual left work for good cause is dispositive of whether reasonable assurance existed, and therefore also dispositive of whether the reduction in benefits under ORS 657.221 may be applied.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time. If an individual leaves work to accept an offer of other work, good cause exists if the offer was definite, the work was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances and was reasonably expected to continue, and the work paid an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left. OAR 471-030-0038(5)(a).

In Order No. 18-UI-114570, the ALJ found as fact that claimant began work at a new job on April 2, 2018, more than two weeks after he left work for the employer on March 16, 2018, and determined that claimant left work without good cause because his new job did not begin in the shortest length of time as was reasonable under the circumstances. However, the hearing record contains no information as to when claimant began his new job after he left work with Lincoln County School District, or any information regarding the circumstances necessary to determine the reasonableness of that start date. To

determine if claimant had good cause to quit to accept an offer of other work, the ALJ must ask the parties questions to determine if the offer of work was definite, reasonably expected to continue, and how much claimant was paid by Lincoln County School District and the new employer. *See* OAR 471-030-0038(5)(a).

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 claimant had good cause for voluntarily leaving work with the employer and whether ORS 657.167 or ORS 657.221 applied to claimant's circumstances, Order No. 18-UI-114570 is reversed, and this matter remanded for development of the record. The ALJ does not need to address the other conditions regarding the school recess issue unless new facts divulged at the hearing on remand necessitate it.

**DECISION:** Order No. 18-UI-114570 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** September 14, 2018

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-114570 or return this matter to EAB. Only a timely application for review of the subsequent Order from OAH will cause this matter to return to EAB.

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