

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0906**

*Affirmed*  
*Benefits Payable Weeks 25-18 through 32-18*

**PROCEDURAL HISTORY:** On July 3, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding benefits were payable to claimant during the period between two successive academic terms (decision # 112809). The employer filed a timely request for hearing. On August 28, 2018, ALJ Janzen conducted a hearing, and on August 30, 2018, issued Order No. 18-UI-115826, affirming the Department’s decision. On September 18, 2018, the Department filed an application for review of Order No. 18-UI-115826 with the Employment Appeals Board (EAB).

In written argument, the Department asserted, “the Administrative Law Judge erred in the determination by not using the recess period the employer testified to during the hearing. The Department’s administrative rule OAR 471-030-0074(1) defines ‘academic year’ for the purpose of school employee recess determinations...[and]... the ALJ cite[d] *Friedlander* as the reason he used a break period other than which was defined by the institution...[although]...the *Friedlander* case was issued prior to the updated [administrative rule].” Written argument at 1. While we agree with the Department that the ALJ erred by relying on the definition of “academic year” set forth in *Friedlander*, for the reasons explained, the recess period was not material to the outcome of this case and the ALJ’s ultimate conclusion that benefits were payable for each week claimed by claimant was correct.

**FINDINGS OF FACT:** (1) On June 11, 2018, claimant filed an initial claim for benefits, effective the second quarter of 2018. The base year for a claim filed during that quarter includes January 1, 2017 to December 31, 2017. Claimant claimed benefits for the weeks including June 17 through August 11, 2018 (weeks 25-18 through 32-18), the weeks at issue.

(2) Claimant had three base year employers, Clackamas Community College (CCC), Clackamas County Children’s Commission and Robin Van Houten. The Department determined that claimant had a valid

claim for unemployment insurance benefits based on her total base year wages from all three employers. However, only CCC was an educational institution for purposes of unemployment insurance. The Department determined that claimant's weekly benefit amount, based on her total base year wages, was \$604.

(3) CCC was a community college with an academic year that included four terms – summer, fall, winter, and spring – and the academic year began with the summer term. Transcript at 17. Claimant worked for CCC as a part-time faculty instructor beginning with the 2017 fall term and worked in that capacity during the subsequent winter, spring and summer terms in 2018. In no week during the fall, winter, spring or summer terms did claimant work 40 hours for CCC or earn her weekly benefit amount of \$604 from that employer. Both CCC and claimant expected that claimant would work in the same capacity of part-time faculty instructor during the 2018 summer and fall terms.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Benefits are payable to claimant for the weeks at issue.

The Department determined claimant had a valid claim for benefits, i.e., was *monetarily* eligible, based on the total amount of her base year wages from CCC and her other two base year employers and that her weekly benefit amount was \$604. However, when claims for benefits are based solely or in part on base-year wages from educational institutions, both ORS 657.167 and ORS 657.221 require a reduction in the benefits payable under certain prescribed conditions. Claimant seeks benefits based on services performed, in part, for CCC as a part-time faculty instructor. CCC is an educational institution as defined in ORS 657.010(6). Therefore, ORS 657.167, which applies to services performed for educational institutions by individuals, such as claimant, in an instructional, research or principal administrative capacity, limits when those benefits may be paid, if prescribed conditions are satisfied.

ORS 657.167 provides, in relevant part, as follows:

657.167 Amount and time period for payment of benefits to educational institution employees.

(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...regular terms...if such individual performs such services in the first of such academic years or terms and 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 . . .

However, the Employment Department adopted a rule exempting certain individuals from the reduction in benefits required by ORS 657.167. That rule provides, in relevant part:

School Employees.

...

(2) ORS 657.167... appl[ies] when the individual claiming benefits was *not unemployed*, as defined by ORS 657.100, during the relevant period in the preceding academic year or term. The relevant period is... (b) The prior academic year or term when the week(s) claimed commenced during a customary recess period between academic terms or years...

...

(Italics added) OAR 471-030-0074 (April 29, 2018).

Because claimant sought benefits for the period of June 17 through August 11, 2018 (weeks 25-18 through 32-18), after the spring term at CCC ended on June 16, 2018, the relevant period under OAR 471-030-0074 for determining whether claimant was “not unemployed” during the preceding academic term is CCC’s 2018 spring term. ORS 657.100 provides that an individual is unemployed in any week of less than full-time work in which the individual earns less than her (or his) weekly benefit amount. Here, the Department’s witness testified that during each week of the 2018 spring term, claimant worked less than full-time and earned only \$204.08, which was substantially less than her weekly benefit amount of \$604. Transcript at 20-22. Accordingly, the record shows that claimant was exempted by OAR 471-030-0074(2) from the benefit reduction provisions of ORS 657.167 for the weeks at issue.

The prescribed conditions of ORS 657.167 have not been shown to be applicable with respect to the benefits claimed by claimant for the weeks at issue. Accordingly, those benefits are not subject to the reduction contemplated by that statutory section and are payable to claimant, if she is otherwise eligible.

**DECISION:** Order No. 18-UI-115826 is affirmed.

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

**DATE of Service:** October 25, 2018

**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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