

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0992

Modified
Eligible During Summer Recess Period

PROCEDURAL HISTORY: On August 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103919). On August 8, 2018, the Department served notice of administrative decision concluding that claimant was not eligible to receive benefits during the recess period between two academic years (decision # 110539). Claimant filed timely requests for hearing on both decisions. On September 25, 2018, ALJ Janzen conducted a hearing on both administrative hearings and on September 26, 2018 issued two Orders, the first reversing decision # 103919 and concluding that claimant voluntarily left work with good cause (Order No. No. 18-UI-117264) and the second reversing decision # 110539 and concluding that claimant was eligible to receive benefits during the period of July 1, 2018 through August 4, 2018 (Order No. 18-UI-117266). On October 16, 2018, Order No. 18-UI-117264 became final without an application for review having been filed. On October 15, 2018, the Department filed an application for review of Order No. 18-UI-117266 with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) During academic years 2016-2017 and 2017-2018, Greater Albany Public Schools (GAPS), an educational institution, employed claimant in an instructional capacity as a teacher and a band director. In at least one week in academic year 2017-2018, claimant earned more than \$604. On June 15, 2018, claimant voluntarily left work with GAPS for good cause.¹

¹ Order No. 18-UI-117264, to which claimant and GAPS were named parties, found that claimant left GAPS on June 15, 2018 for good cause under OAR 471-030-0038 (January 11, 2018). Order No. 18-UI-117264 became final October 16, 2018.

(2) On June 19, 2018, claimant filed an initial claim for unemployment insurance benefits. Claimant's claim was determined valid with a weekly benefit amount of \$604. The base year for claimant's claim was January 1, 2017 through December 31, 2017. Claimant's only employment during the base year was in instructional capacities for GAPS and Oregon State University (OSU), an institution of higher education.²

(3) The summer recess period for GAPS between academic years 2017-2018 and 2018-2019 was from June 15, 2018 through August 31, 2018 (weeks 25-18 through 35-18). Claimant claimed benefits for the weeks of July 1, 2018 through August 4, 2018 (weeks 27-18 through 31-18).

CONCLUSIONS AND REASONS: Claimant was not ineligible to receive benefits during the summer recess period for GAPS, which was between June 15, 2018 and August 31, 2018, based on his status as an employee of GAPS in an instructional capacity during academic year 2017-2018.

In the base year underlying claimant's claim for unemployment insurance benefits, claimant worked only for educational institutions. Special requirement apply when an individual claims benefits based on employment with educational institutions.

ORS 657.167(1) provides that benefits based on service in an instructional capacity for an educational institution 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 ORS chapter 657, except that benefits shall not be paid on such services for any week of unemployment commencing during the period between two successive academic years if such individual performs such services in the first of such academic years or terms and there is a contract or reasonable assurance that such individual will perform services in any such capacity for any institution in the second of such academic years or terms. An "academic year" is the time frame within 12 months and separated by break periods in which an educational institution ordinarily operates to provide courses of study. OAR 471-030-0074(1) (April 29, 2018). ORS 657.167 is applicable when the individual was not unemployed, as defined by ORS 657.100, during the prior academic year when the weeks claimed commence during a customary recess period between academic years or terms, unless there is a specific agreement providing for services between regular, but not successive terms. OAR 471-030-0074(2) and (2)(b). ORS 657.167 is applicable regardless of whether or not the individual performed services only during the academic year or in a year-round position. OAR 471-030-0074(3).

OAR 471-030-0075 (April 29, 2018) defines "reasonable assurance." Reasonable assurance requires that there be a written, oral or implied offer of employment for the ensuing academic year or term made by an authorized individual, the offered employment must be in the same or similar capacity as the service performed during the prior academic year and the economic conditions of the offer may not be considerably less than in the first year. OAR 471-030-0075(1)(a)-(c) (April 29, 2018). An individual who voluntarily leave work for good cause as defined under OAR 471-030-0038 does not have reasonable assurance with the educational employer from whom the person left work. OAR 471-030-0075(4).

² The Department issued administrative decision # 113046 on August 8, 2018, which addressed claimant's eligibility for benefits based on his employment with OSU. Because that is a separate proceeding from the one before EAB on review, issues raised in it are not addressed in this decision.

Claimant claimed benefits for weeks 27-18 through 31-18, which fell within the GAPS' summer recess period between academic years 2017-2018 and 2018-2019. Claimant worked for GAPS in an instructional capacity in academic year 2017-2018 and claimant earned at least his weekly benefit amount during at least one week in that academic year, which is sufficient to establish that he was not unemployed in that school year as defined by ORS 657.100.³ Accordingly, ORS 657.167 is applicable to claimant's claims for benefits during the summer recess period if he had a "reasonable assurance" of employment with the employer in academic year 2018-2019.

In Order No. 18-UI-117264, it was determined that claimant's voluntarily leaving from GAPS on June 15, 2018 was with good cause. The same named parties were involved in that proceeding as are involved in this proceeding and the same issue, whether claimant had good cause for leaving work with GAPS on June 15, 2018, is involved in both proceedings. Principles of adjudicative finality and consistency in determinations require us to give effect in this proceeding to the conclusion reached in Order No. 18-UI-117264 as to claimant's good cause for leaving work. Because claimant had good cause for leaving work with GAPS, he did not have reasonable assurance of work with GAPS in academic year 2018-2018, and ORS 657.167(1) is inapplicable to render claimant ineligible for benefits during GAPS' summer recess period between academic years 2017-2018 and 2018-2019.

However, in Order No. 18-UI-117266, the ALJ determined that ORS 657.167(1) did not limit claimant's eligibility for benefits only during the period July 1, 2018 through August 4, 2018 (weeks 27-18 through 31-18), when the summer recess period for GAPS was from June 15, 2018 through August 31, 2018 (weeks 25-18 through 35-18). Even though claimant did not claim benefits during all of the weeks in GAPS' summer recess period, claimant was not ineligible to receive benefits based on his status as an educational employee during all of the weeks that fell within the summer recess period for GAPS. The ALJ erred in determining that claimant was not ineligible to receive benefits only during weeks 27-18 through 31-18, and Order No. 18-UI-117266 should have stated that claimant was not ineligible to receive benefits during the period of June 15, 2018 through August 31, 2018 (weeks 25-18 through 35-18).

DECISION: Order No. 18-UI-117266 is modified, as outlined above.

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

DATE of Service: November 16, 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. 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.

³ ORS 657.100 provides that an individual is deemed "unemployed" in any week during which the individual performs no work for pay or in any week of less than full-time employment if the remuneration paid or payable is less than the individual's weekly benefit amount.

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