

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0809

Order No. 19-UI-134847 Modified – Benefits Payable

PROCEDURAL HISTORY: On July 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was ineligible for benefits based on her base year wages from an educational employer during the period between two successive academic years but that she was eligible for reduced benefits based on her base year wages from a non-educational employer during that period (decision # 70835). Claimant filed a timely request for hearing. On August 8, 2019, ALJ Janzen conducted a hearing, and on August 9, 2019, issued Order No. 19-UI-134847, affirming the department's decision. On August 20, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument in support of claimant's applications for review. However, the argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On June 13, 2019, claimant filed an initial claim for unemployment insurance benefits, effective the second quarter of 2019. An initial claim filed during that quarter has a base year that begins on January 1, 2018 and ends on December 31, 2018.

(2) Between January 1, 2018 and December 31, 2018, claimant had two employers, Salem Keizer Public Schools (SKPS) and Home Care Workers (HCW). SKPS was an educational institution and HCW was not. The Department determined that claimant had a monetarily valid claim for benefits based on her total base year wages from both employers with a weekly benefit amount of \$328. It also determined that claimant had a monetarily valid claim for benefits based on her base year wages from HCW only with a weekly benefit amount of \$187.

(3) The recess period between the 2018-2019 and 2019-2020 academic years for SKPS began on June 13, 2019 and ended on September 3, 2019 (weeks 25-19 through 35-19). Claimant claimed benefits for the weeks including June 16 through August 3, 2019 (weeks 25-19 through 31-19).

(4) During the 2018-2019 academic year, claimant worked for SKPS in an instructional capacity. Initially, claimant worked for SKPS as a substitute instructional assistant at the hourly wage of \$12.11. However, on December 1, 2018, the employer hired claimant to work as a temporary part-time instructional assistant at the hourly wage of \$14.72. Claimant worked in that position until the end of the 2018-2019 academic year. Claimant earned more than \$328 from SKPS during at least one week of the 2018-2019 academic year.

(5) At the end of the 2018-2019 academic year, SKPS notified claimant that she would not be offered the position of temporary part-time instructional assistant for the 2019-2020 academic year. However, SKPS notified claimant that she could work during the 2019-2020 academic year as a substitute instructional assistant, which would pay an hourly wage of \$12.36.

CONCLUSIONS AND REASONS: Benefits based on claimant's base year wages from both her educational and non-educational employers are payable to claimant during the period between two successive academic years.

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 and that her weekly benefit amount was \$328. However, when claims for benefits are based, totally or in part, on base-year wages from an educational institution, both ORS 657.167 and ORS 657.221 require a reduction in those benefits under certain prescribed conditions. Claimant seeks benefits based, in part, on services last performed for SKSD as a temporary, part-time instructional assistant during the 2018-2019 academic year. SKPS 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(1) and (2) prohibit benefits based upon services for an educational institution performed in an instructional, research or principal administrative capacity from being paid "for any week of unemployment commencing during the period between two successive academic years or" 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." In sum, the conditions that must be met for the between-terms school recess denial to apply to claimant are these: (1) the weeks claimed must commence during a period between two academic terms; (2) claimant must not have been "unemployed" during the term prior to the recess period at issue; and (3) there is reasonable assurance of work during the term following the recess period at issue.

Order No. 19-UI-134847 concluded that claimant claimed benefits for weeks that commenced during a recess period between two academic years and was not unemployed during the term prior to the recess period, and the preponderance of the evidence in the hearing record supports those conclusions. Order No. 19-UI-134847 at 2-3. However, the order also concluded that weekly benefits were payable to

claimant only at the reduced benefit amount of \$187 because she had reasonable assurance of continuing work for SKPS in the 2019-2020 academic year. Order No. 19-UI-134847 at 5. The order reasoned:

The employer notified claimant that claimant would remain on its substitute instructional assistant list for the 2019-2020 academic year, which was the same or similar work that she had during the 2018-2019 academic year. Claimant did not have any guarantee of employment during either the 2018-2019 academic year or the 2019-2020 academic year as a substitute or temporary instructional assistant. Claimant's rate of pay for a substitute position would also increase slightly. Claimant, therefore, had a reasonable assurance that she will perform services in the same or similar capacity for the employer in the 2018-2019 academic year...[C]laimant's school wages are not accessible to her during the period between terms, but her non-school wages are. Because claimant has non-school earnings of a sufficient amount to qualify for a weekly benefit amount of \$187.00, she would be allowed to draw that amount during the school recess period.

Id. However, OAR 471-030-0075 (April 29, 2018) states:

(1) The following must be present before determining whether an individual has a contract or reasonable assurance:

(a) There must be an offer of employment, which can be written, oral, or implied. The offer must be made by an individual with authority to offer employment.

(c) The economic conditions of the offer may not be considerably less in the following academic year, term or remainder of a term than the employment in the first year or term. The term 'considerably less' means the employee will not earn at least 90% of the amount, excluding employer paid benefits, than the employee earned in the first academic year or term, or in a corresponding term if the employee does not regularly work successive terms (i.e. the employee works spring term each year).

Here, the employer's offer of employment to claimant for the 2019-2020 academic year was to work as an instructional assistant on a substitute basis, which paid an hourly wage of \$12.36. Claimant's last employment for SKPS during the 2018-2019 academic year was as a temporary part-time instructional assistant at the hourly wage of \$14.72. An hourly wage of \$12.36 is 84% of the hourly wage of \$14.72. Based upon comparison of the hourly wage of claimant's work during both academic years, the economic conditions of the employer's offer of substitute work during the 2019-2020 academic year were "considerably less" than the economic conditions of claimant's last employment for SKPS as a temporary part-time instructional assistant during the 2018-2019 academic year. For that reason, that claimant did not have reasonable assurance of continuing work with the employer during the 2019-2020 academic year and the conditions that must be met for the between-terms school recess denial to apply to claimant have not been met.

The prescribed conditions of 657.167 have not been shown to have been satisfied with respect to benefits based on claimant's base-year wages from SKPS for the weeks during the period between two successive academic years. Accordingly, claimant's benefits are not subject to reduction, and benefits are payable to claimant in the full weekly benefit amount of \$328 for the weeks including June 13, 2019 to September 3, 2019 (weeks 25-19 through 35-19), provided each of those weeks have been claimed and claimant is otherwise eligible.

DECISION: Order No. 19-UI-134847 is modified, as outlined above.¹

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

DATE of Service: September 24, 2019

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.

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¹ This decision partially reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.



Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار .

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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