

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0319

Affirmed
Benefits Not Payable Weeks 27-21 through 34-21

PROCEDURAL HISTORY: On July 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits from July 4, 2021 through September 11, 2021 (weeks 27-21 through 36-21), a school recess period, because claimant was likely to return to work for the employer after the break, and claimant's wages and/or hours with other employers were not sufficient to entitle her to benefits during the break (decision # 143908). Claimant filed a timely request for hearing. On February 10, 2022, ALJ S. Lee conducted a hearing, and on February 17, 2022 issued Order No. 22-UI-186795, modifying decision # 143908 by concluding that claimant was not eligible for benefits from July 4, 2021 through August 28, 2021 (weeks 27-21 through 34-21). On March 8, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed her initial claim for unemployment insurance benefits on July 14, 2021 with an effective date of June 27, 2021. The Department established that claimant's base year was January 1, 2020 through December 31, 2020, and that her weekly benefit amount was \$431.

(2) During the base year, claimant worked as a special education teacher for Lane County Educational Service District, an educational institution. Claimant did not work for any other employers, or earn any other wages, during the base year.

(3) On January 16, 2021, claimant accepted a contract for temporary position as an online-only special education teacher with Lane County School District # 19 (the employer), an educational institution, in order to substitute for another teacher who had taken maternity leave. The offer was for full time work, and paid \$26,603.95 for 94 contract days between February 1, 2021 and June 18, 2021. Claimant worked for the employer full time for the entirety of the contract period.

(4) Around April 2021, the employer notified claimant that the teacher she had been substituting for had decided not to return to work the following academic year (2021-2022). The employer invited claimant to apply for the vacancy, which claimant did.

(5) On June 10, 2021, the employer drafted a contract offering claimant the position. The offer was for \$55,715.00 for 193 contract days, beginning on August 31, 2021 and ending on June 17, 2022. The position offered to claimant was substantially the same position as she had worked from February through June 2021, although some duties were modified as claimant was expected to teach in-person, rather than online, for the 2021-2022 academic year. Under the contract, the offer was conditioned upon the passage of “a proposed budget” by “voter approval of a proposed levy or otherwise,” but the offer contained no other contingencies. Exhibit 1 at 2. The employer did not provide claimant with the contract at that time.

(6) On the last day of the 2020-2021 academic year, on or around June 18, 2021, the employer notified claimant that they had decided to hire her for the 2021-2022 academic year. Claimant signed the contract sometime during the summer of 2021, after the 2020-2021 academic year had ended, and began working per the terms of the new contract when the new academic year began.

(7) The employer’s break between academic years was from June 17, 2021 to September 7, 2021. This is the recess period at issue. Claimant claimed benefits for the weeks including July 4, 2021 through August 28, 2021 (weeks 27-21 through 34-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Benefits based on claimant’s educational wages were not payable to claimant for the period between academic years.

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.

ORS 657.100 provides that an individual is “unemployed” if there are no earnings, or the earnings are less than the individual’s weekly benefit amount. OAR 471-030-0074(3) (January 5, 2020) provides:

(3) ORS 657.167 and 657.221 apply 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:

(a) The week prior to the holiday or vacation period when the week(s) claimed commenced during a holiday or vacation period.

(b) The prior academic year or term when the week(s) claimed commenced during a customary recess period between academic terms or years, unless there is a

specific agreement providing for services between regular, but not successive terms.

(c) The last academic year or term when the week(s) claimed commenced during a recess between non-consecutive academic terms or years when there is a specific agreement providing for services between regular, but not successive terms.

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.

(b) The offer of employment during the ensuing academic year or term must be in the same or similar capacity as the service performed during the prior academic year or term. The term 'same or similar capacity' refers to the type of services provided: i.e., a 'professional' capacity as provided by ORS 657.167 or a 'nonprofessional' capacity as provided by ORS 657.221.

(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).

(2) An individual has a contract to perform services during the ensuing academic year, term, or remainder of a term when there is an enforceable, non-contingent agreement that provides for compensation for an entire academic year or on an annual basis.

(3) An individual has reasonable assurance to perform services during the ensuing academic year, term, or remainder of a term when:

(a) The agreement contains no contingencies within the employer's control. Contingencies within the employer's control include, but are not limited to, the following:

(A) Course Programming;

(B) Decisions on how to allocate available funding;

(C) Final course offerings;

(D) Program changes;

(E) Facility availability; and

(F) Offers that allow an employer to retract at their discretion.

(b) The totality of circumstances shows it is highly probable there is a job available for the individual in the following academic year or term. Factors to determine the totality of the circumstances include, but are not limited to:

(A) Funding, including appropriations;

(B) Enrollment;

(C) The nature of the course (required or options, taught regularly or sporadically);

(D) The employee's seniority;

(E) Budgeting and assignment practices of the school;

(F) The number of offers made in relation to the number of potential teaching assignments; and

(G) The period of student registration.

(c) It is highly probable any contingencies not within the employer's control in the offer of employment will be met.

* * *

Claimant worked for the employer, an educational institution, during the 2020-2021 academic year. The employer paid her \$26,603.95 for 94 contract days, which is equal to \$283.02 per contract day, or \$1,415.10 per week. As claimant's weekly benefit amount was \$431, claimant earned more than her weekly benefit amount in educational employment during at least one week of the academic year prior to the recess period at issue. Claimant therefore was, per ORS 657.167, not "unemployed" during at least one week of the academic year prior to the recess period at issue.

Further, the record shows that claimant had reasonable assurance of returning to perform services for an educational institution in the following (2021-2022) academic year. On June 10, 2021, the employer drafted a contract which offered claimant the position she had already been performing temporarily during the latter half of the 2020-2021 academic year. Although claimant's duties might have changed to some extent, due to the switch from online-only to in-person teaching, the 2021-2022 position was in the same or similar capacity as the 2020-2021 position under OAR 471-030-0075(1)(b) because both positions were for "professional" services—i.e., instructional—under ORS 657.167. The 2021-2022 position also paid slightly higher (approximately \$288.68 per day for full time work, compared to the

\$283.02 per day for the previous year), and the economic conditions were therefore not “considerably less” than the previous year under OAR 471-030-0075(1)(c).

The record is not clear as to when the employer provided the contract for the 2021-2022 academic year to claimant, or when claimant signed it, as the employer did not submit evidence into the record on this issue and claimant was unable to recall specifically when during the summer of 2021 she received or signed the contract. However, even if claimant did not have a *contract* until some indeterminate point during that summer, the record shows that claimant had reasonable assurance that she would be returning to work for the employer in the following academic year. On the last day of the 2020-2021 academic year, the employer verbally notified claimant that they had decided to hire her for the position. Further, under OAR 471-030-0075(3)(a), an individual does not have reasonable assurance if the offer contains any contingencies within the employer’s control including, in relevant part, decisions on how to allocate available funding. The only contingency upon which the offer was premised was the passage of a budget by “voter approval of a proposed levy or otherwise.” The will of the voting public was not within the employer’s control, and therefore the offer contained no contingencies within the employer’s control.

Under OAR 471-030-0075(3)(b) and (c), reasonable assurance also requires that the totality of circumstances show that it is highly probable there is a job available for the individual in the following academic year or term and that any contingencies not within the employer’s control in the offer of employment will be met. Although, as discussed above, claimant’s offer was premised upon the passage of a voter-approved budget, the record contains no indication that the measure was unlikely to pass, nor does it contain any indication that any of the other factors under OAR 471-030-0075(3)(b) would have likely interfered with the availability of the job offer. Therefore, the totality of the circumstances show that it was highly probable that, as of no later than the last day of the 2020-2021 academic year, there was a job available for claimant for the following academic year.

For the above reasons, claimant had reasonable assurance that she would return to work for an educational institution following the break between academic years, and benefits based upon claimant’s educational wages were therefore not payable during the period at issue. As claimant did not have any non-educational wages in her base year, claimant was not eligible for benefits during the period at issue.

DECISION: Order No. 22-UI-186795 is affirmed.

S. Alba and A. Steger-Bentz;
D. Hettle, not participating.

DATE of Service: April 8, 2022

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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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 desisyon.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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 الاستئناف 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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