

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0244

Modified
Benefits Payable During Break Period

PROCEDURAL HISTORY: On July 8, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant benefits from June 19 through September 3, 2022 (weeks 25-22 through 35-22), concluding that claimant was likely to return to work for the employer, and claimant's wages and/or hours with other employers were not sufficient to entitle claimant to benefits (decision # 160402). Claimant filed a timely request for hearing. On September 15, 2022, ALJ Frank conducted a hearing, and on September 22, 2022 issued Order No. 22-UI-203390, reversing decision # 160402 by concluding that claimant did not have reasonable assurance of returning to work for an educational employer, and therefore was eligible for benefits for weeks 25-22 through 35-22. On October 12, 2022, the Department filed an application for review with the Employment Appeals Board (EAB). On December 20, 2022, EAB issued EAB Decision 2022-EAB-1044, remanding the matter for further development of the record to determine whether claimant had reasonable assurance of returning to work for an educational employer during the break period.

On January 31, 2023, ALJ Frank conducted a hearing, and on February 2, 2023 issued Order No. 23-UI-214688, modifying decision # 160402 by concluding that claimant did not have reasonable assurance of returning to work for an educational employer during weeks 25-22 through 28-22 and therefore was eligible for benefits for those weeks, but did have reasonable assurance during weeks 29-22 through 35-22) and therefore was not eligible for benefits for those weeks. On February 21, 2023, claimant filed a timely application for review of Order No. 23-UI-214688 with EAB.

FINDINGS OF FACT: (1) On March 22, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant's base year was October 1, 2020 through September 30, 2021, and her weekly benefit amount was \$733.

(2) During her base year, claimant worked as an elementary school teacher for Crook County School District, an educational employer. Claimant did not earn any wages from a non-educational employer

during her base year. The employer reported to the Department that they paid claimant a total of \$71,219.24 in wages during her base year.¹

(3) During the 2021-2022 academic year, claimant earned more than her weekly benefit amount during at least one week.

(4) On February 25, 2022, claimant quit working for the employer. The Department investigated the work separation and issued an administrative decision concluding that claimant quit work with good cause. Claimant later relocated from Oregon to Texas.

(5) The employer's recess period between the 2021-2022 and 2022-2023 academic years was from June 15 through September 2, 2022 (weeks 25-22 through 35-22).

(6) Claimant claimed benefits for the weeks from June 19, 2022 through August 6, 2022 (weeks 25-22 through 31-22).

(7) On or around July 20, 2022, claimant received an offer of work from an educational employer in Texas. The offer was for full-time work as an elementary school teacher beginning August 3, 2022, and paid a salary of \$62,000 per year.

CONCLUSIONS AND REASONS: Claimant did not have reasonable assurance of continuing employment during the employer's break period between the 2021-2022 and 2022-2023 academic years. Benefits for any weeks claimed during the period of June 19 through September 2, 2022 are payable to claimant if she is otherwise eligible.

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.

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:

¹ EAB has taken notice of this fact, which contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(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.

(4) 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.

The order under review concluded that claimant did not have reasonable assurance during weeks 25-22 through 28-22 because she was found to have quit her school job with good cause; but that claimant *did* have reasonable assurance as of week 29-22 because she received an offer of "the same type of full-time teaching work that she had last performed." Order No. 23-UI-214688 at 5. The record does not support the conclusion that claimant had reasonable assurance during any part of the break period.

The fact that claimant received an offer of work for the new academic year that was similar to the type that she had performed in the previous academic year is not, by itself, sufficient to show that claimant had reasonable assurance, as that term is defined under OAR 471-030-0075. In particular, the record fails to show that the economic conditions of the offer that claimant received in July 2022 were not "considerably less in the following academic year, term or remainder of a term than the employment in the first year or term" per OAR 471-030-0075(1)(c). Under that provision of the rule, "considerably less" means, in relevant part, that 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.

The record shows that the Texas employer offered claimant an annual salary of \$62,000. The record does not definitively show how much claimant's previous employer paid claimant during the base year. However, the record shows that the previous employer reported \$71,219.24 in wages during claimant's base year. The Texas job paid \$62,000, which is approximately 87% of the wages that the previous employer reported for claimant's base year. The record therefore shows the offer of work likely paid less than 90% of the amount that claimant earned in the previous academic year, and the economic conditions of the offer therefore were "considerably less" in the following academic year. As a result, the record establishes that claimant likely did not have reasonable assurance during the break period, and therefore was eligible for benefits for any weeks claimed during that period if she was otherwise eligible.

DECISION: Order No. 23-UI-214688 is modified, as outlined above.

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

DATE of Service: April 12, 2023

NOTE: This decision 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.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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