

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0686

Affirmed
Ineligible Weeks 26-24 through 34-24

PROCEDURAL HISTORY: On July 18, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits from June 14, 2024, through August 23, 2024, 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 # L0005124655). Claimant filed a timely request for hearing. On September 17, 2024, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on September 18, 2024, issued Order No. 24-UI-266623, affirming decision # L0005124655.¹ On September 25, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her September 25, 2024, argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019), and it was therefore not considered. Claimant’s October 15, 2024, argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented her 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). EAB considered claimant’s October 15, 2024, argument to the extent it was based on the record at hearing.

FINDINGS OF FACT: (1) Multnomah County School District employed claimant as a half-time teacher, and later an on-call substitute teacher, during the 2023-2024 academic year. The school district’s summer recess period was June 14, 2024, through August 23, 2024.

(2) On June 21, 2024, the employer sent claimant an email stating that they were “terminating” her from working as a substitute teacher, effective June 22, 2024. Audio Record at 27:17. Claimant immediately

¹ Because claimant claimed benefits only for the weeks of June 23, 2024, through August 24, 2024 (weeks 26-24 through 34-24), the order affirmed claimant’s ineligibility only for those weeks.

contacted the employer and learned that the email had been sent in error and that she had not been discharged. Claimant was informed that she remained eligible to accept work as a substitute teacher through an online portal during the 2024-2025 academic year in the same manner and under the same terms as she had during the previous academic year. Additionally, the employer told claimant that she was eligible to work as a substitute teacher during the summer recess period but “altered” the method by which assignments were offered from the process used during the academic year. Audio Record at 25:07. Claimant did not receive any summer assignments, which she attributed to this change.

(3) On June 25, 2024, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant’s claim was monetarily valid with a weekly benefit amount of \$476, using a standard base year of the first through fourth quarters of 2023. Claimant thereafter claimed benefits for the weeks of June 23, 2024, through August 24, 2024 (weeks 26-24 through 34-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) In the first quarter of 2024, the employer paid claimant an average of \$923.25 per week. Claimant earned more than \$476 from the employer during at least one week of the 2023-2024 academic year. Aside from her earnings from the employer, claimant’s only other earnings in subject employment during the base year, not from an educational institution, totaled \$323.91, with 21 hours worked. The Department determined that claimant’s earnings other than those earned from the employer would have alone been insufficient to establish a monetarily valid claim.

(5) At “the end of July” 2024, claimant moved from Oregon to Maryland. Claimant did not inform the employer of the move because she wanted the option of returning to Oregon and working as a substitute until she found other employment. Audio Record at 28:35. Claimant ultimately found other employment in Maryland but remained active in the employer’s portal to accept substitute work at the start of the 2024-2025 academic year.

CONCLUSIONS AND REASONS: Claimant was ineligible to receive unemployment insurance benefits during the school recess period.

Validity of a claim based on other wages. ORS 657.150(2)(a) provides, in relevant part, that to qualify for benefits an individual must have:

(A) Worked in subject employment in the base year with total base year wages of \$1,000 or more and have total base wages equal to or in excess of one and on-half times the wages in the highest quarter of the base year* * * [.]

ORS 657.150(b) provides, “If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to this chapter during the base year.

Claimant’s earnings from subject employment during the base year other than from educational institutions totaled \$323.91, with 21 hours worked. Because these earnings were less than \$1,000, and the number of hours worked were less than 500, claimant could not establish a monetarily valid claim for unemployment insurance benefits using the standard or alternate base years based on such work

alone. Accordingly, claimant cannot establish a monetarily valid claim without the use of wages from an educational institution.

Eligibility to receive benefits 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” in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is 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.

(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 denied claimant benefits for the weeks at issue under ORS 657.167(1). The weeks at issue occurred during the employer's summer recess between two academic years. Further, claimant was "not unemployed" for purposes of ORS 657.167(1) during the relevant period in the preceding academic year, as claimant had earnings during at least one week of that academic year that exceeded her weekly benefit amount of \$476. Therefore, the applicability of ORS 657.167(1) turns on whether claimant had a reasonable assurance of work during the term following the summer recess period, which was the 2024-2025 academic year. The record shows that she did.

Claimant testified that although she received an email from the employer on June 21, 2024, stating that she had been terminated from her substitute teacher work effective the following day, claimant learned later that day that the email had been sent in error and that she had not been discharged. Audio Record at 22:25. Claimant further testified that while she was informed at this time of a change to the assignment procedure for substitute teacher work during the summer recess, she was also told that the employer would continue to use the same procedures and methods for work assignment during the 2024-2025 academic year as they had during the 2023-2024 academic year. Audio Record at 25:00 to 25:53.

Claimant advanced two arguments for believing that she lacked reasonable assurance of work during the 2024-2025 academic year: the erroneous June 21, 2024, termination email, and the changes to the work assignment procedure for the 2024 summer recess period. Claimant's October 15, 2024, Argument at 1. However, claimant's testimony established that she discovered the same day that the email was sent that it had been sent in error and that the employer desired that she continue working on the same terms during the 2024-2025 academic year. Therefore, the record shows that the letter had no effect on the reasonable assurance of work, other than to reinforce during discussion of the error that the employer desired that she continue working as a substitute in the next academic year. Claimant's testimony further established that while the work assignment procedure changed for the 2024 summer recess period, possibly resulting in claimant not being offered work during the summer recess, the process to be used during the 2024-2025 academic year would remain unchanged from that which had been used during the

2023-2024 academic year. It can therefore reasonably be inferred that the economic terms of the offered employment in the coming academic year were not considerably less favorable than those she had been offered during the previous academic year. An on-call substitute teacher is provided no guarantees that they will have any quantity of work from one year to the next and, absent an assured reduction in the quantity of work, has reasonable assurance of returning to work. *See Employment Division v. De Leon*, 89 Or. App. 25, 747 P.2d 1000 (Or. Ct. App. 1987). Accordingly, claimant had reasonable assurance of work during the 2024-2025 academic year.

Nonetheless, claimant's move to Maryland during the weeks at issue raises the possibility that OAR 471-030-0075(4) negated the reasonable assurance of work for the weeks following the move if claimant had voluntarily left work with good cause at or after the time she moved. For purposes of determining whether a work separation occurred, "[w]ork" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (September 22, 2020). Though claimant testified she moved to Maryland at the end of July 2024, and presumably could not have performed substitute teacher work for the employer from that location, she also stated that she did not inform the employer of her move because she was "hoping to come back but ended up applying to other jobs and secured another job" and therefore "did not change [her] status" in the employer's work assignment portal for the 2024-2025 academic year. Audio Record at 28:46. The record therefore shows that claimant did not sever her relationship with the employer and that no work separation occurred during the weeks at issue. Accordingly, claimant's move had no effect on the reasonable assurance of work.

For these reasons, all requirements were met for ORS 657.167(1) to apply to claimant's circumstances, and claimant was therefore ineligible to receive unemployment insurance benefits during the summer recess period of June 14, 2024, through August 23, 2024. Accordingly, claimant was ineligible to receive benefits for the weeks at issue, all of which occurred during that recess period.

DECISION: Order No. 24-UI-266623 is affirmed.

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

DATE of Service: October 21, 2024

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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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