

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0719**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 17, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits from June 16, 2024 through August 31, 2024 (weeks 25-24 through 35-24), a school recess period, because the wages needed to monetarily qualify for benefits were earned through service in an instructional, research, or principal administrative capacity for an educational institution, 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 # L0005199164).<sup>1</sup> Claimant filed a timely request for hearing. On September 16, 2024, ALJ Frank conducted a hearing, and on September 24, 2024, issued Order No. 24-UI-267182, affirming decision # L0005199164. On October 14, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Crook County School District employed claimant for a period which included their 2022-2023 and 2023-2024 academic years. The employer's recess between the 2023-2024 and 2024-2025 academic years was from June 13, 2024, through August 30, 2024.

(2) On March 25, 2024, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of \$341, with a base year of October 1, 2022, through September 30, 2023. Claimant's only earnings during the base year were from the employer. Claimant could not establish a monetarily valid claim

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<sup>1</sup> Decision # L0005199164 stated that the employer's school recess period was from June 13, 2024, through August 30, 2024, and that claimant's wages and hours from other employers were not enough to monetarily establish a claim for benefits, but did not specify the resulting period of weeks for which claimant was ineligible for benefits. Given the dates of the school recess period, however, it can be inferred that the Department intended to find claimant ineligible for benefits for weeks 25-24 through 35-24, pursuant to ORS 657.167(1) and (2).

without the wages earned from the employer. Claimant claimed benefits for the weeks of June 16, 2024, through August 31, 2024 (weeks 25-24 through 35-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(3) During the 2023-2024 academic year, claimant was paid \$21.91 per hour and was expected to work 7 hours per day, 180 days per year. Claimant earned more than her \$341 weekly benefit amount during at least one week of the 2023-2024 academic year.

(4) On April 9, 2024, claimant accepted the employer's written offer of continued employment for the 2024-2025 academic year with financial terms that were at least as favorable to claimant as in the previous academic year. The offer was contingent only on "the district's ability to provide necessary funds for this assignment." Exhibit 1 at 5. This contingency was present in all employment offers made by the employer, and in recent years had rarely or never resulted in the revocation of an offer. Claimant resumed her work with the employer as anticipated at the start of the 2024-2025 academic year.

**CONCLUSIONS AND REASONS:** Order No. 24-UI-267182 is set aside, and this matter remanded for further development of the record.

ORS 657.167(1) prohibits the payment of benefits based on service for an educational institution performed in an instructional, research, or principal administrative capacity "for any week of unemployment commencing during the period between two successive academic years [or terms]" if the claimant "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." ORS 657.167(1) also provides, "All services by an individual for an institution shall be deemed in instructional, research or principal administrative capacity if at least 50 percent of the individual's time is spent in such activities." OAR 471-030-0075 (April 29, 2018) sets forth the criteria for determining whether a claimant has reasonable assurance.

However, under ORS 657.010(10), "Instructional capacity" does not include services performed as an instructional assistant as defined in ORS 342.120. Further, ORS 342.120(7) defines "Instructional assistant" as "a classified school employee who does not require a license to teach, who is employed by a school district or education service district and whose assignment consists of and is limited to assisting a licensed teacher in accordance with rules established by the Teacher Standards and Practices Commission."

ORS 657.221(1) provides, "Benefits based on services performed in other than an instructional, research or principal administrative capacity for an educational institution or institution of higher education 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 this chapter."<sup>2</sup>

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:

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<sup>2</sup> This version of ORS 657.221 became effective January 1, 2024 and is applicable to benefit weeks after that date, including the weeks at issue.

(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:

\* \* \*

(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.

\* \* \*

The record shows that claimant could not have monetarily established a claim for benefits without the use of wages from the employer, that she was not “unemployed” during the 2023-2024 academic year within the meaning of OAR 471-030-0074(3)(b), and that she had reasonable assurance of performing work in the same capacity during the 2024-2025 academic year as in the prior academic year. The order under review concluded that claimant’s benefits, if paid, would have been based on work for an educational employer in an instructional capacity and that she was therefore subject to the ineligibility provisions of ORS 657.167(1) for the weeks at issue. Order No. 24-UI-267182 at 3-5. The record as developed does not support this conclusion.

The employer’s written offer to claimant of continued employment for the 2024-2025 academic year listed claimant’s position as “IA II SPECIAL ED.” Exhibit 1 at 2. Further, the Department’s representative testified that he understood claimant’s job title to be “instructional assistant.” Audio Record at 12:32. Neither the employer’s witness nor claimant rebutted this testimony, though claimant suggested that she also sought work as a “substitute” and was “trying to apply for a teaching position” in 2024. Audio Record at 26:20. It is therefore unclear whether claimant had been working in an “instructional capacity” for the employer, given that OAR 657.010(10) excludes services performed as an instructional assistant from being considered as such work. Additional development of the record is therefore needed to determine whether claimant’s wages from the employer during the base year were from services as an instructional assistant and therefore not performed in an “instructional capacity.”

On remand, inquiry should be made into claimant’s job title and assignments performed; whether claimant had additional job titles or performed assignments outside the scope of ORS 342.120(7) and, if so, what percentage of time was devoted to instructional assistant assignments; whether claimant was licensed to teach; and, if so, whether any assignments she performed required such a license. If the record on remand shows that claimant did not devote at least 50 percent of time worked to assignments in an “instructional capacity,” any determination of whether claimant was eligible for benefits during the weeks at issue should be made in accordance with ORS 657.167(1) and ORS 657.221(1).

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant’s wages from the

employer were based on work performed in an “instructional capacity,” Order No. 24-UI-267182 is reversed, and this matter is remanded.

**DECISION:** Order No. 24-UI-267182 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** November 5, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-267182 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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