

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0229

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On October 16, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA effective February 2, 2020. Claimant filed a timely request for hearing. On March 12, 2021, ALJ Meerdink conducted a hearing and issued Order No. 21-UI-162601, affirming the October 16, 2020 administrative decision. On March 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument to the extent it was based on the record. Claimant asserted that the hearing proceedings did not show a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) On March 29, 2020, claimant filed an initial claim for benefits under the regular unemployment insurance program (Regular UI). The Department determined that the amount of base year wages paid to claimant was sufficient to qualify her for Regular UI benefits. Exhibit 1 at 15, Wage and Potential Benefit Report. The Department determined that claimant's weekly benefit amount was \$172, that the maximum amount payable under the claim was \$4,472, and that her claim had a benefit year expiration date effective the end of the week of March 28, 2021 through April 3, 2021 (week 13-21). Exhibit 1 at 15, Wage and Potential Benefit Report.

(2) Claimant claimed benefits under her Regular UI claim for the week of March 29, 2020 through April 4, 2020 (week 14-20), and each of the weeks of April 12, 2020 through May 9, 2020 (weeks 16-20 through 19-20). However, claimant had a part time job and for each of the weeks claimant claimed Regular UI benefits, she reported earnings that exceeded her weekly benefit amount. As a result, the Department deemed claimant ineligible to receive benefits with respect to each of those weeks and did not pay claimant benefits.

(3) On or soon after March 29, 2020, claimant filed an initial claim for benefits under the PUA program. Claimant claimed benefits under her PUA claim for each of the weeks of March 29, 2020 through March 6, 2021 (weeks 14-20 through 09-21), the weeks at issue. However, for each of the weeks claimant claimed PUA benefits, claimant's rights to her Regular UI claim were unexhausted. As a result, the Department deemed claimant not entitled to PUA and did not pay claimant benefits.

CONCLUSIONS AND REASONS: Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for weeks 14-20 through 09-21.

Under the CARES Act Pub. L. 116-136, to be entitled to receive PUA benefits, an individual must be a "covered individual" as that term is defined by the Act. Pub. L. 116-136, § 2102(b). In pertinent part, the Act defines a "covered individual" as "an individual who . . . is not eligible for regular compensation . . . under State or Federal law . . . ***including an individual who has exhausted all rights to regular unemployment*** . . . under State or Federal law[.]" Pub. L. 116-136, § 2102(a)(3)(A)(i) (emphasis added). Thus, if an individual has not exhausted all rights to a Regular UI claim, they do not constitute a "covered individual" and are not entitled to receive PUA benefits.

Claimant was not entitled to receive PUA benefits during the weeks at issue because she had not exhausted all rights to her Regular UI claim. After claimant filed an initial claim for Regular UI benefits, the Department determined claimant qualified for a Regular UI claim and assigned claimant a weekly benefit amount of \$172. The Department established a maximum benefit amount payable under the claim of \$4,472 and determined that the claim would expire effective the end of the week of March 28, 2021 through April 3, 2021 (week 13-21). During the weeks at issue, while claimant was making weekly claims under the PUA program, her Regular UI claim remained unexpired and had a maximum benefit amount ample to support multiple weeks of continuing claims. Thus, the record shows that claimant had not exhausted all rights to her Regular UI claim during the weeks at issue, and for that reason claimant was not a "covered individual" entitled to receive PUA benefits.

In her written argument, claimant pointed out that during the weeks at issue, she had a part time job. Claimant argued that this meant that she was not eligible for Regular UI and therefore should have been considered a "covered individual" entitled to PUA. It is correct that during the weeks claimant claimed Regular UI, week 14-20 and weeks 16-20 through 19-20, she reported earnings from her part time job that exceeded her weekly benefit amount, and for that reason was ineligible to receive benefits with respect to those particular weeks because she did not constitute an "unemployed individual."¹

However, earnings information is subject to change and is assessed with respect to each particular week claimed. The mere fact that claimant's earnings were too high for her to be eligible to receive Regular UI benefits for the handful of weeks that she claimed Regular UI did not operate to exhaust all of claimant's rights to Regular UI. As discussed above, to constitute a "covered individual" entitled to PUA, claimant must establish that she "exhausted all rights to regular unemployment[.]" Pub. L. 116-136, § 2102(a)(3)(A)(i). Claimant's ineligibility for Regular UI for week 14-20 and weeks 16-20 through 19-20 applied only with respect to those particular weeks, not claimant's Regular UI claim in its

¹ Under ORS 657.155(1), to receive Regular UI benefits "with respect to any week" a claimant must constitute an "unemployed individual." A claimant is deemed an unemployed individual "in any week of less than full-time work if the remuneration paid . . . for services performed during the week is less than the individual's weekly benefit amount." ORS 657.100(1).

entirety. Nothing in the record establishes that claimant had exhausted all rights to her Regular UI claim during the weeks at issue. Accordingly, claimant was not a “covered individual” within the meaning of the CARES Act and was not entitled to receive PUA benefits.

For these reasons, claimant was not entitled to receive PUA benefits for weeks 14-20 through 09-21

DECISION: Order No. 21-UI-162601 is affirmed.

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

DATE of Service: May 6, 2021

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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