

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0241

Reversed
Eligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On February 18, 2021, 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 March 15, 2020. Claimant filed a timely request for hearing. On March 22, 2021, ALJ Frank conducted a hearing, and on March 25, 2021 issued Order No. 21-UI-163453, affirming the February 18, 2021 administrative decision and concluding that claimant was not entitled to receive PUA benefits from March 22, 2020 through July 25, 2020 (weeks 13-20 through 30-20). On March 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant was an Oregon resident who had resided in Oregon continuously since 2008. Claimant was self-employed and operated her own business in Oregon since 2008. Claimant had not earned wages sufficient to qualify her for regular unemployment benefits.

(2) On May 18, 2020, claimant filed an initial claim for PUA benefits in Oregon. Claimant claimed and the Department paid claimant PUA benefits for the weeks from March 22, 2020 through July 25, 2020 (weeks 13-20 through 30-20).

(3) After the Department paid claimant PUA benefits for the weeks claimed, the Department learned that an individual had claimed and been paid PUA benefits in California using claimant's social security number but under a different name and address. The Department also learned that the individual had been receiving weekly PUA benefits in California beginning with the week February 23, 2020 through February 29, 2020. California records did not show that any California wages were attributable to the individual who filed the PUA claim using claimant's social security number. On February 18, 2021, the Department served the administrative decision concluding that claimant was not entitled to PUA benefits in Oregon.

(4) Claimant did not file a claim for PUA benefits in California. Claimant was not eligible for regular benefits or extended benefits under federal law or the law of any state.

CONCLUSIONS AND REASONS: Claimant is eligible to receive Pandemic Unemployment Assistance benefits for weeks 13-20 through 30-20.

Under the CARES Act Pub. L. 116-136, to be eligible 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 or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107” and provides a self-certification that the individual “is otherwise able to work and available for work within the meaning of applicable State law,” but is rendered unemployed or unavailable to work because of one or more of 11 listed reasons that relate to the COVID-19 pandemic. Pub. L. 116-136, § 2102(a)(3)(A)(i)-(ii). Thus, if an individual is eligible for a regular unemployment claim, extension, or extended benefits in Oregon or another state, the individual is not eligible for PUA. Where, as here, the Department has paid benefits, it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department concluded that claimant was not entitled to PUA benefits effective March 15, 2020 because claimant was “eligible for a regular unemployment claim, extension, or extended benefits in Oregon or another state.” February 18, 2021 administrative decision at 1. Order No. 21-UI-163453 affirmed the Department’s decision, reasoning, “corresponding weeks of PUA were being claimed under her name in the state of California . . . and . . . [f]ederal law requires an individual to exhaust the supply of virtually all alternative types of unemployment benefits before being entitled to receive PUA.”¹ However, the record does not support the order’s conclusion or reasoning.

The record fails to show that claimant was eligible for a regular unemployment claim, extension, or extended benefits in Oregon or another state, including California. Claimant asserted at hearing, “I have been self-employed for a very long time....which makes me ineligible for a regular unemployment claim.” The Department’s witness did not dispute that assertion, and conceded that a records check in California did not reveal that any wages had been earned in California under claimant’s social security number, which had been used to file a claim for PUA benefits in California using a different name and address. Audio Record at 9:30 to 11:40. Claimant credibly denied filing the claim, and the Department’s witness stated that the potential identity theft of claimant’s social security number would be forwarded to the Department’s identity theft section and the state of California notified about the issue. Audio Record at 15:15 to 15:45, 18:50 to 19:45.

The record therefore fails to show that claimant was eligible for regular unemployment benefits or a regular benefit extension program in Oregon, California or any other state during the weeks she claimed and was paid PUA benefits in Oregon, or that she filed a claim for PUA benefits in California. Accordingly, claimant was a “covered individual” for purposes of Section 2102(a)(3) of the CARES Act, and therefore was entitled to receive PUA benefits for the weeks at issue.

DECISION: Order No. 21-UI-163453 is set aside, as outlined above.

¹ Order No. 21-UI-163453 at 2-3.

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

DATE of Service: May 7, 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 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 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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