

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0265

Reversed & Remanded

PROCEDURAL HISTORY: On December 24, 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 benefits effective February 2, 2020. Claimant filed a timely request for hearing. On March 18, 2021, ALJ Janzen conducted a hearing, and on March 19, 2021 issued Order No. 21-UI-163020, affirming the December 24, 2020 administrative decision. On April 5, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 23, 2020, claimant filed an initial claim for PUA benefits.

(2) Prior to the onset of the COVID-19 pandemic, claimant was self-employed and operated a business in which he performed landscaping, home organization, and appliance repair services. For the last several years, claimant did not earn sufficient income from the business to be required to pay taxes on the income. Claimant's business experienced a downturn as a result of the pandemic, both because customers did not want claimant working in their houses, and because customers were less apt to spend money on his services due to economic uncertainty.

(3) At the time that claimant filed his initial claim, he did not have any wages reported by an employer.

(4) Claimant claimed benefits for the weeks from March 22, 2020 through May 30, 2020, June 7, 2020 through August 15, 2020, August 23, 2020 through August 29, 2020, September 6, 2020 through October 10, 2020, October 18, 2020 through November 14, 2020, November 22, 2020 through January 9, 2021, and February 14, 2021 through March 13, 2021 (weeks 13-20 through 22-20, 24-20 through 33-20, 35-20, 37-20 through 41-20, 43-20 through 46-20, 48-20 through 01-21, and 07-21 through 10-21). These are the weeks at issue. The Department did not pay claimant benefits for any of the weeks at issue.

CONCLUSIONS AND REASONS: Order No. 21-UI-163020 is set aside and this matter remanded for another hearing and order.

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(a). 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). Those reasons include, in relevant part, that “the individual meets any additional criteria established by the Secretary [of Labor] for unemployment assistance under this section.” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(kk). Per § 2102(a)(3)(A)(ii)(II) of the CARES Act, an individual may also meet the definition of a “covered individual” if they are self-employed, seeking part-time employment, lack sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under § 2107 of the CARES Act and otherwise meet the requirements listed under § 2102(a)(3)(A)(ii)(I) of the CARES Act.

The United States Department of Labor (USDOL) has determined that, “For purposes of PUA coverage, an individual ‘lacking sufficient work history’ means an individual (1) with a recent attachment to the labor force (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular [unemployment], and (3) who became unemployed or partially unemployed because of one of the COVID-19 related reasons identified under Section 2102.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 10.

USDOL has further determined that, “in addition to individuals who qualify for benefits under the other criteria described [in § 2102(a)(3)(A)(ii)(I)(aa)–(jj) of the CARES Act], an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. For example, a driver for a ridesharing service who receives an IRS Form 1099 from the ride sharing service may not be eligible for PUA benefits under the other criteria outlined above, because such an individual does not have a ‘place of employment,’ and thus cannot claim that he or she is unable to work because his or her place of employment has closed. However, under the additional eligibility criterion established by the Secretary here, the driver may still qualify for PUA benefits if he or she has been forced to suspend operations as a direct result of the COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 13.

The order under review concluded that claimant was not eligible for PUA benefits because he “did not establish that he was unemployed due to a reason set forth in Sec. 2102(a)(3)(A)(ii)(I)(aa) *et seq* or that he had been employed in 2019 or 2020” and did not present evidence that he was “attached to the Oregon labor market.” Order No. 21-UI-163020 at 3. To the extent that the order under review concluded that claimant was ineligible because he was not unemployed due to a reason set forth in § 2102(a)(3)(A)(ii)(I) of the CARES Act, the record does not support that conclusion. At hearing,

claimant testified that his business had suffered from the pandemic due to customers' safety concerns—"nobody wanted to be around strangers"—and because "everybody was watching their budget." Audio Record at 24:28 to 24:41. Claimant appeared to provide additional information to explain why he was unemployed or underemployed as a result of the pandemic. However, due to poor call audio quality, much of claimant's recorded testimony is unintelligible. On remand, further inquiry should be made regarding whether claimant was unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency severely limited his ability to continue performing his customary work activities, and thereby forced him to suspend such activities, per § 2102(a)(3)(A)(ii)(I)(kk) and USDOL's eligibility criteria under that subclause.

The record also does not support the conclusion that claimant was ineligible for PUA benefits because he was "not attached to the Oregon labor market" or employed in 2019 or 2020. Although USDOL does require a "recent attachment to the labor force" in order to find that an individual is lacking "sufficient work history" for purposes of eligibility under § 2102(a)(3)(A)(ii)(II) of the CARES Act, neither the statute nor UIPL 16-20 require either that the individual be "attached" to the labor market of the state in which they have filed a claim for benefits, nor that a "recent attachment" to the labor force means having worked in 2019 or 2020. The hearing record does not identify the source of authority which includes such requirements for eligibility, and the order under review cites to none. On remand, the record should be further developed to determine whether claimant had a "recent attachment to the labor force" as discussed in UIPL 16-20, and any subsequently-issued orders should cite to the legal bases for all conclusions reached regarding claimant's eligibility.

Finally, the hearing record contains no inquiry as to whether claimant was, except for COVID-19 related reasons outlined in § 2102 of the CARES Act, "otherwise able to work and available for work within the meaning of applicable State law" for each of the weeks at issue. On remand, the record should be so developed.

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 was eligible for PUA benefits during each of the weeks at issue, Order No. 21-UI-163020 is reversed, and this matter is remanded for further development of the record.

DECISION: Order No. 21-UI-163020 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 18, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-163020 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 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 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.

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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