

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0301

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On February 19, 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 benefits effective September 27, 2020. Claimant filed a timely request for hearing. On April 5, 2021, ALJ Scott conducted a hearing and issued Order No. 21-UI-164144, affirming the February 19, 2021 administrative decision and concluding that claimant was not eligible for PUA benefits for the weeks including October 4, 2020 through December 12, 2020. On April 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Since February 29, 2020, claimant has resided in Taiwan, where he had been working for an employer based in California. Before February 29, 2020, claimant had worked for the employer while he resided in Beaverton, Oregon, and claimant still considered Oregon to be his permanent residence.

(2) Claimant had a medical condition that made him more likely to get severely ill from COVID-19. For that reason, claimant felt safer in Taiwan and did not feel safe returning to the United States.

(3) On September 30, 2020, claimant's employer laid him off due to the COVID-19 pandemic. On October 5, 2020, claimant filed an initial claim for regular unemployment insurance benefits, and claimed regular benefits for each of the weeks including October 4, 2020 through December 12, 2020 (weeks 41-20 through 50-20). These are the weeks at issue. The Department found that claimant had a valid claim, but was not eligible for regular benefits during the weeks at issue because he was outside of the country and therefore not available for work.¹

(4) On December 28, 2020, claimant filed an initial claim for PUA benefits, and claimed PUA benefits for the weeks at issue.

¹ See EAB Decision 2021-EAB-0109. Note that while this decision is based on the same core set of facts which led EAB to issue EAB Decision 2021-EAB-0109, the conclusions drawn here are not dependent on the findings of fact which EAB made in the earlier decision.

CONCLUSIONS AND REASONS: Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for the weeks at issue.

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 other types of unemployment benefits 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 not available for work because of a reason listed under Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA. However, if an individual is not available for work by operation of applicable state law, the individual is not a “covered individual” under the Act and is therefore not eligible for PUA. *See* April 27, 2020 U.S. Dep’t of Labor UI Program Letter at 12 (“Eligibility for PUA requires that the individual be able to work and available to work within the meaning of applicable state law, unless the individual is unable or unavailable . . . because of a reason listed under section 2102(a)(3)(A)(ii)(I) of the CARES Act, he or she would not be eligible for PUA.”).

Under applicable Oregon law, an individual is not considered “available for work” in any week in which the individual resided or spent the major portion of the week outside of the United States, District of Columbia, or any territory or political division that is directly overseen by the United States federal government unless the individual resided or spent the major portion of the week: (A) in Canada and was authorized to work in Canada; (B) in a country included in the Compact of Free Association with the United States of America;² or (C) at a military base or embassy located outside the United States but directly overseen by the United States federal government, if the individual is the spouse or domestic partner of an individual stationed at such a base or embassy. OAR 471-030-0036(3)(i) (temporary amend filed July 30, 2020, effective August 2, 2020 through December 26, 2020).

The record shows that, during the weeks at issue, claimant was located in Taiwan, and does not show that claimant was the spouse or domestic partner of an individual stationed at a United States military base or embassy. Whether claimant considered his permanent residence to be in Oregon is not material to this determination, as OAR 471-030-0036(3)(i) applies to individuals whom, regardless of where their permanent residence is located, spend the majority of any week outside of the territories contemplated by the rule. For that reason, claimant was not considered “available for work” within the meaning of applicable state law, and was therefore not considered a “covered individual” per § 2102(a)(3)(A)(ii)(I).

For the above reasons, claimant was not eligible to receive PUA benefits for the weeks at issue, weeks 41-20 through 50-20.

DECISION: Order No. 21-UI-164144 is affirmed.

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

² The countries included in the Compact of Free Association with the United States of America are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *See* 48 U.S.C. §§ 1901-1973.

DATE of Service: May 26, 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 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 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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