

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0322

*Modified in Part, Reversed and Remanded in Part
(Eligible for Pandemic Unemployment Assistance
Weeks 23-20 through 28-20, 43-20, and 44-20)*

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 receive PUA benefits effective May 17, 2020. Claimant filed a timely request for hearing. On April 1, 2021, ALJ Murdock conducted a hearing, and on April 8, 2021, issued Order No. 21-UI-164448, modifying the February 19, 2021 administrative decision to conclude that claimant was not eligible for PUA benefits for the weeks including May 31, 2020 through July 11, 2020 (weeks 23-20 through 28-20), but was eligible for PUA benefits for the weeks including October 18, 2020 through January 2, 2021, January 10, 2021 through January 16, 2021, January 24, 2021 through February 20, 2021, and March 21, 2021 through March 27, 2021 (weeks 43-20 through 53-20, 2-21, 4-21 through 7-21, and 12-21). On April 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) In March 2020, the United States Census Bureau hired claimant as an enumerator. Claimant's work was originally scheduled for the period of March 12, 2020 through July 31, 2020. Due to safety and logistical concerns, which resulted from the COVID-19 pandemic, including the employer's difficulty in finding a facility to fingerprint new employees before they started work, claimant's start date was delayed by several months. As a result, claimant ultimately did not begin her work for the Census Bureau until July 24, 2020. At that time, the work was scheduled to continue until October 31, 2020. On October 16, 2020, the Census Bureau laid claimant off early due to safety concerns relating to the COVID-19 pandemic and Oregon wildfires. The Census Bureau was not able to complete all of the work it had intended to complete at that point.

(2) On December 10, 2020, claimant filed an initial claim for benefits. The Department initially determined that claimant was not eligible for PUA benefits because they expected that claimant's federal wages would allow claimant to qualify for regular unemployment insurance benefits. The Department later determined that claimant was not eligible for regular benefits based on her federal wages.

(3) Claimant claimed PUA benefits for the weeks including May 31, 2020 through July 11, 2020, October 18, 2020 through January 2, 2021, January 10, 2021 through January 16, 2021, January 24, 2021 through February 20, 2021, and March 21, 2021 through March 27, 2021 (weeks 23-20 through 28-20, 43-20 through 53-20, 2-21, 4-21 through 7-21, and 12-21). These are the weeks at issue.

(4) Because the Census Bureau was not able to complete all of its work in 2020, claimant may be called back for more work starting in or around June 2021.

CONCLUSIONS AND REASONS: Claimant is eligible for PUA benefits for weeks of May 31, 2020 through July 11, 2020 (weeks 23-20 through 28-20), October 18, 2020 through October 24, 2020, (week 43-20), and October 25, 2020 through October 31, 2020 (week 44-20). Order No. 21-UI-164448 is reversed and remanded as to all other weeks at issue for further development of the record.

Eligible for PUA Benefits – Weeks 23-20 through 28-20, 43-20 and 44-20. 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(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 eleven reasons, including that “the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency” or that “the individual’s place of employment is closed as a direct result of the COVID-19 public health emergency.” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(gg), (jj).

The order under review concluded that while claimant’s job with the Census Bureau “was delayed in starting because applicants for the job could not undergo the pre-employment screening that was required due to the COVID-19 pandemic . . . that circumstance did not meet any of the provisions in the CARES Act that entitled an individual to receive PUA benefits,” and as a result, claimant was not eligible for PUA benefits until after she was laid off on October 16, 2020. Order No. 21-UI-164448 at 3. The record does not support this conclusion. Rather, the record shows that claimant was originally scheduled to begin work on March 12, 2020, but was delayed by several months due to the employer’s safety and logistical concerns that resulted from the COVID-19 pandemic. Therefore, claimant was scheduled to commence employment and did not have a job or was unable to reach the job as a direct result of the COVID-19 public health emergency per § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act, she met the definition of a “covered individual” for the period of time between when the work was originally scheduled to begin and when she actually began. Claimant was therefore eligible for PUA benefits for weeks 23-20 through 28-20.

Similarly, because the assignment ended about two weeks earlier than its originally-planned end date of October 31, 2020 due, in part, to heightened concerns about the pandemic, claimant’s place of employment was closed as a direct result of the COVID-19 public health emergency. Claimant was therefore a “covered individual” per § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act for the period of time

between when she was laid off and when the job had been scheduled to end and as such was eligible for PUA benefits for weeks 43-20 and 44-20.

Remand – Weeks 45-20 through 53-20, 2-21, 4-21 through 7-21, and 12-21. Further inquiry is needed to determine whether claimant was a “covered individual” for that reason for the weeks at issue after 44-20. At hearing, claimant testified that the Census Bureau was planning to resume operations in June 2021 to “finish up what they didn’t complete.” Audio Record at 17:57. The record does not show how much work was left incomplete when claimant was laid off on October 16, 2020 or how much longer claimant would likely have continued performing her work if not for the pandemic. It is not clear, for instance, whether the work would have been completed had the Census Bureau been allowed to continue its work until October 31, 2020, or whether it would have needed to continue working past that date. On remand, the record should be developed to show how much longer claimant would likely have worked for the Census Bureau if not for the pandemic. This inquiry is needed because, per § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act, claimant would only be considered a “covered individual” for the period of time during which her place of employment was closed as a direct result of the COVID-19 public health emergency. For any subsequent period of time during which claimant would have become unemployed due to the normal completion of her work for the Census Bureau, claimant would not meet the definition of a “covered individual,” and therefore would not be eligible for PUA benefits.

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 for the weeks including weeks 45-20 through 53-20, 2-21, 4-21 through 7-21, and 12-21, Order No. 21-UI-164448 is modified in part, and this matter is remanded.

DECISION: Order No. 21-UI-164448 is modified in part and reversed and remanded in part, as outlined above.

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

DATE of Service: May 28, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-164448 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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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