

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0334

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On February 23, 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 February 9, 2020. Claimant filed a timely request for hearing. On April 8, 2021, ALJ Murdock conducted a hearing, and on April 12, 2021 issued Order No. 21-UI-164610, affirming the February 23, 2021 administrative decision and concluding that claimant was not entitled to PUA benefits for the weeks including March 29, 2020 through April 3, 2021 (weeks 14-20 through 13-21). On April 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument dated April 28, 2021 contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's April 28, 2021 argument to the extent it was based on the record.

Claimant's "Addendum to Written Argument" dated May 17, 2021 contained information that was not part of the hearing record. Because claimant did not receive the new information until after the hearing record had closed, circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. However, because the new information was not relevant and material to EAB's determination, under OAR 471-041-0090(1)(b)(A), EAB did not consider the information when reaching this decision.

FINDINGS OF FACT: (1) Beginning in 2016, claimant had been self-employed as an independent contractor, performing design and material-sourcing work for her sole client, a real estate contractor and developer. Claimant paid taxes on the income she earned as an independent contractor.

(2) Due to significant supply-chain problems resulting from the COVID-19 pandemic—such as drastic increases in the price of lumber used for framing houses, and long delays in the shipment of fixtures

such as doorknobs—claimant’s client experienced a downturn in their real estate projects. Claimant continued to perform work for her client through April 2020, at which point the client no longer had work for her to perform because of the supply-chain problem caused by the pandemic. Claimant last performed work for the client on April 20, 2020.

(3) On September 2, 2020, claimant submitted an initial claim for PUA benefits. Claimant did not have wages in subject employment¹ which would have allowed her to qualify for regular unemployment insurance benefits. Claimant subsequently claimed PUA benefits for the weeks from March 29, 2020 through April 3, 2021 (weeks 14-20 through 13-21), the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA 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 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, “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.”

¹ See generally ORS 657.030 *et. seq.*

U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 13.

Claimant was self-employed as an independent contractor until April 2020. After that point, claimant's sole client no longer had any work for her due to supply-chain issues which resulted from the COVID-19 pandemic. While claimant may therefore have been unemployed as a result of the pandemic, the record does not show that she was unemployed as a *direct* result of the pandemic as contemplated under the provisions of § 2102(a)(3)(A)(ii)(II) of the CARES Act.

Per USDOL guidance,² “direct result” as used in § 2102 of the CARES Act is defined per 20 C.F.R. 625.5(c) to mean that “the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from: (1) The physical damage or destruction of the place of employment; (2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.” Here, the supply-chain problems which led to the decrease in claimant's client's work resulted from a “longer chain of events precipitated or exacerbated by” the pandemic, and not the result of the types of events contemplated in 20 C.F.R. 625.5(c). Claimant therefore does not meet the eligibility criteria under § 2102(a)(3)(A)(ii)(II) of the CARES Act.

Additionally, claimant does not meet the eligibility criteria that USDOL established under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. The record shows that claimant was an independent contractor with reportable income and was unemployed because the pandemic severely limited her ability to continue performing her customary work activities. However, the example offered in UIPL 16-20 to illustrate these eligibility criteria—a rideshare driver who 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 (emphasis added)—suggests that USDOL intended the criteria established under that subsection to apply only to individuals whose unemployment is the “direct result” of the pandemic. To read this guidance without the “direct result” requirement would result in independent contractors being eligible for PUA benefits where employees in otherwise-identical circumstances would be ineligible. The consistent usage “direct result” requirement throughout the language of the eligibility criteria of the PUA program, and the lack of any explanation to clarify why independent contractors should otherwise be considered eligible on grounds not available to employees—therefore indicates that, more likely than not, USDOL did not intend § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act to create eligibility for individuals whose unemployment results only indirectly from the pandemic. Therefore, claimant was not eligible for PUA under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

For the above reasons, claimant was ineligible for PUA benefits for the weeks at issue.

² U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 14.

DECISION: Order No. 21-UI-164610 is affirmed.

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

DATE of Service: June 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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