

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0351

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On August 21, 2020, 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 March 30, 2020. Claimant filed a request for hearing. On January 27, 2021, ALJ Kangas issued Order No. 21-UI-159898, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 10, 2021. On February 1, 2021, claimant filed a timely response to the appellant questionnaire. On February 19, 2021, OAH mailed notice of a hearing scheduled for April 2, 2021 at 10:45 a.m. to consider whether claimant's request for hearing should be allowed and, if so, the merits of the August 21, 2020 administrative decision. On April 2, 2021, ALJ Wyatt conducted a hearing, and on April 9, 2021 issued Order No. 21-UI-164547, allowing claimant's request for hearing and affirming the August 21, 2020 administrative decision.¹ On April 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument to the extent it was based on information received into evidence at the hearing.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request for hearing on the August 21, 2020 administrative decision is **adopted**.

FINDINGS OF FACT: (1) On March 31, 2020, claimant filed an initial claim for benefits under the regular unemployment insurance program (Regular UI). The Department determined that claimant had a valid Regular UI claim with a weekly benefit amount of \$648.

(2) Claimant claimed Regular UI benefits for the weeks from March 29, 2020 through May 23, 2020 (weeks 14-20 through 21-20). Claimant worked 40 hours and earned \$1,211.54 for each week that he

¹ Order No. 21-UI-164547 noted that the late request for hearing issue was not heard or contested because OAH received information from the Department that claimant's request for hearing was timely. Order No. 21-UI-164547 at 1 n.1.

claimed Regular UI benefits. The Department did not pay claimant benefits for any of those weeks because his weekly earnings exceeded his weekly benefit amount for each of those weeks.

(3) On August 6, 2020, claimant filed an initial claim for benefits under the PUA program. Claimant claimed PUA benefits retroactively for the weeks from March 15, 2020 through April 25, 2020 (weeks 12-20 through 17-20), the weeks at issue. For week 12-20, claimant worked 48 hours and earned \$2,948.00. For week 13-20, claimant worked 48 hours and earned \$1,675.00. For the remaining four weeks claimant claimed PUA benefits, weeks 14-20 through 17-20, claimant worked 40 hours and earned \$1,211.54 each week.

(4) The Department determined that claimant was not entitled to PUA and did not pay claimant PUA benefits for any of the weeks he claimed. The Department determined that claimant was not entitled to PUA because claimant was eligible for Regular UI benefits and his weekly earnings for each week he claimed PUA benefits exceeded the maximum weekly benefit amount available under PUA.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive Pandemic Unemployment Assistance benefits for weeks 12-20 through 17-20.

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 . . . under State or Federal law . . . ***including an individual who has exhausted all rights to regular unemployment*** . . . under State or Federal law” and provides a self-certification that the individual is otherwise able and available for work within the meaning of applicable State law, “except ***the individual is unemployed, partially unemployed, or unable 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) (emphasis added).

Under ORS 657.155(1), to receive benefits “with respect to any week” a claimant must constitute an “unemployed individual.” “An individual is deemed ‘unemployed’ in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount.” ORS 657.100(1).

Claimant was not eligible to receive PUA benefits during the weeks at issue because he did not constitute a “covered individual” under § 2102(a)(3)(A), in part, because he was eligible for Regular UI benefits during the weeks at issue and had not exhausted all rights to Regular UI for those weeks.

In his written argument, claimant argued that he was not eligible for Regular UI and therefore should have been considered eligible to receive PUA benefits because the Department did not pay claimant benefits for any of the weeks he claimed Regular UI due to his excess earnings. It is correct that during the weeks claimant claimed Regular UI, weeks 14-20 through 21-20, he reported hours that constituted full-time work and earnings that exceeded his weekly benefit amount, and for that reason was ineligible to receive benefits with respect to those particular weeks because he did not constitute an “unemployed individual.” However, claimant had a valid Regular UI claim with a weekly benefit amount of \$648, and

hours and earnings information are subject to change and are assessed with respect to each particular week claimed. The mere fact that claimant's hours and earnings were too high for him to be eligible to receive Regular UI benefits for the weeks that he claimed Regular UI did not operate to invalidate his claim or exhaust all of his rights to Regular UI. Claimant's ineligibility for Regular UI benefits for weeks 14-20 through 21-20 applied only with respect to those particular weeks, not claimant's Regular UI claim in its entirety. Nothing in the record establishes that claimant did not have a valid claim for benefits, or that he had exhausted all rights to Regular UI benefits during the weeks at issue.

Claimant also was not a "covered individual" under § 2102(a)(3)(A), or therefore eligible to receive PUA benefits during the weeks at issue, because he was not unemployed, partially unemployed, or unable or unavailable to work because of a reason listed under the CARES Act. Claimant was not unemployed or partially unemployed during any of the weeks he claimed PUA benefits. For each of those weeks, claimant worked at least 40 hours per week, which meant that he had full-time work each week and therefore was not "unemployed" as defined under ORS 657.100. Nor does the record show that claimant was unable or unavailable to work during weeks 12-20 through 17-20 because of a reason listed under the CARES Act, or any other reason, given claimant's substantial earnings and hours he worked.

For these reasons, claimant was not a "covered individual" within the meaning of the CARES Act, and therefore was not eligible to receive PUA benefits during the weeks at issue, weeks 12-20 through 17-20.

DECISION: Order No. 21-UI-164547 is affirmed.

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

DATE of Service: June 4, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.