

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0355

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On February 25, 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 March 8, 2020. Claimant filed a timely request for hearing. On April 13, 2021, ALJ Scott conducted a hearing, and on April 15, 2021 issued Order No. 21-UI-164881, affirming the February 25, 2021 administrative decision. On May 3, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument.

FINDINGS OF FACT: (1) In 2019, claimant began collecting discarded cans and redeeming them for their deposit value.

(2) In March 2020, claimant's sister, who lived with claimant, was diagnosed with COVID-19. Also in March 2020, many of the redemption machines claimant used to redeem cans were closed due to restrictions imposed following the onset of the COVID-19 pandemic.

(3) On April 24, 2020, claimant filed an initial claim for PUA benefits. In his initial claim for PUA benefits, claimant provided a self-certification that his can redemption activities constituted self-employment. Claimant cited his sister's COVID-19 diagnosis and the closure of redemption machines as COVID-19 related circumstances that interfered with his ability to collect and redeem cans.

(4) At the time claimant filed his initial claim, he did not have any wages reported by an employer. The Department subsequently determined claimant was not eligible for regular unemployment insurance benefits, extended benefits, or pandemic emergency unemployment compensation benefits.

(5) Claimant claimed PUA benefits for the weeks including March 22, 2020 through April 3, 2021 (weeks 13-20 through 13-21). These are the weeks at issue. The Department paid claimant PUA benefits for weeks 13-20 through 22-20 and 30-20 through 7-21. The Department did not pay claimant PUA benefits for weeks 23-20 through 29-20 and weeks 8-21 through 13-21.

CONCLUSIONS AND REASONS: Claimant was not eligible 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 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).

An individual may also meet the definition of a “covered individual” if they self-certify that they are self-employed, seeking part-time employment, lack sufficient work history, or otherwise would not qualify for regular unemployment, extended benefits, or pandemic emergency unemployment compensation, so long as they otherwise satisfy the requirements listed under section 2102(a)(3)(A)(ii)(I) of the Act. Pub. L. 116-136, § 2102(a)(3)(A)(ii)(II). Section 2102(h) of the Act provides that regulations at 20 C.F.R. Part 625 apply to the PUA program, unless otherwise stated or contrary to the Act. 20 C.F.R. 625.2(o) defines “self-employment” as “services performed as a self-employed individual.” 20 C.F.R. 625.2(n) defines “self-employed individual” as “an individual whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm.”

Claimant self-certified in his initial claim for PUA benefits that he was self-employed. Claimant’s eligibility for PUA benefits therefore turns on whether he was a “covered individual” under section 2102(a)(3)(A)(ii)(II) of the Act because his can redemption activities constituted self-employment.

Claimant’s can redemption activities did not constitute self-employment because the record does not show that those activities were “services performed as a self-employed individual” as is required to meet the definition of “self-employment” set forth by 20 C.F.R. 625.2(o). It is not established, on this record, that collecting and redeeming cans amounts to “services performed” – the record does not show that anyone received a service or derived any benefit from claimant’s can redemption activities.

Claimant also did not carry out his can redemption activities “as a self-employed individual.” A “self-employed individual,” as that term is defined by 20 C.F.R. 625.2(n), is someone whose primary reliance for income is on the services the individual performs in their “own business or . . . farm.” Here, as previously mentioned, the record does not support that claimant performed any services in connection with his can redemption activities. Further, the record does not indicate that redeeming cans was an activity claimant engaged in as part of his own business or farm. Claimant’s redemption of cans had nothing to do with any farm, and the record shows that his activities lacked the characteristics of a business. There is no indication, for example, that claimant had prepared a business plan in connection with his redemption of cans, or that he had formed and registered with the Oregon Secretary of State a business entity to carry out his can redemption activities. There is also no indication that claimant had ever paid any taxes that are typically assessed against businesses or that he had ever filed any tax return

in which he represented to the taxing authority that his redemption of cans was a business. Given that claimant's can redemption activities lacked these characteristics, the preponderance of evidence supports that claimant did not redeem cans as part of his "own business" and therefore was not a self-employed individual as defined by 20 C.F.R. 625.2(n).

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 13-20 through 13-21.

DECISION: Order No. 21-UI-164881 is affirmed.

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

DATE of Service: June 10, 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 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 الإستئناف 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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