

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0365

Reversed & Remanded

PROCEDURAL HISTORY: On December 30, 2020, 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 8, 2020. Claimant filed a timely request for hearing. On April 8, 2021, ALJ Frank conducted a hearing, and on April 15, 2021 issued Order No. 21-UI-164937, affirming the December 30, 2020 administrative decision and concluding that claimant was not eligible for PUA benefits for the weeks including March 29, 2020 through May 16, 2020 (weeks 14-20 through 20-20). On May 5, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) About 20 years ago, claimant operated his own painting business.

(2) From August 20, 2019 until August 23, 2019, claimant earned about \$400 performing painting services for a business which paid him informally without reporting his income. Claimant had no other recent work history.

(3) Prior to the COVID-19 pandemic, claimant had been intending to restart his painting business. Claimant had secured investors in the business, was in the process of renewing his painting license, and had a job planned for spring and summer 2020. As a result of the pandemic, claimant was not able to restart his painting business.

(4) On July 2, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed benefits for the weeks including March 29, 2020 through May 30, 2020 (weeks 14-20 through 22-20). These are the weeks at issue.

CONCLUSIONS AND REASONS: Order No. 21-UI-164937 is set aside and this matter remanded for further development of the record.

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 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 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)(gg), (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, “For purposes of PUA coverage, an individual ‘lacking sufficient work history’ means an individual (1) with a recent attachment to the labor force (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular [unemployment], and (3) who became unemployed or partially unemployed because of one of the COVID-19 related reasons identified under Section 2102.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 10.

USDOL has further determined, as relates to § 2102(a)(3)(A)(ii)(I)(kk) of the Act, 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.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 13.

The order under review concluded that claimant was not eligible for PUA benefits because he “did not establish that he was unemployed due to a reason set forth in Sec. 2102(3)(ii)(I)(aa) *et seq* or that he had been employed in 2019 or 2020,” and therefore did not show that he “was attached to the Oregon labor market.” Order No. 21-UI-164937 at 3. To the extent that the order under review concluded that claimant was ineligible because he was not unemployed due to a reason set forth in § 2102(a)(3)(A)(ii)(I) of the CARES Act, the record does not support that conclusion. At hearing,

claimant testified that while he had made plans to restart his painting business, including plans for a job slated to begin in spring 2020, the investors in the company “fell through because of the COVID.” Audio Record at 16:15. However, the record does not show why specifically claimant’s investors backed out, or why, as his testimony suggested, claimant did not ultimately renew his painting license as planned. On remand, further inquiry should be made to determine the timing of events that would have led claimant to restart his painting business, as well as the specific reason or reasons that claimant was unable to do so, and whether, as a result, 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)¹ of the CARES Act. The record should also be developed to determine whether claimant met the eligibility criteria for PUA benefits under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act and the additional criteria that pertains to that subclause, which is set forth in UIPL 16-20 as quoted above.

The record also does not support the conclusion that claimant was ineligible for PUA benefits because he was “not attached to the Oregon labor market” or employed in 2019 or 2020. Although USDOL does require a “recent attachment to the labor force” in order to find that an individual is lacking “sufficient work history” for purposes of eligibility under § 2102(a)(3)(A)(ii)(II) of the CARES Act, neither the statute nor UIPL 16-20 require either that the individual be “attached” to the labor market of the state in which they have filed a claim for benefits, nor that a “recent attachment” to the labor force means having worked in 2019 or 2020. The hearing record does not identify the source of authority which includes such requirements for eligibility, and the order under review cites to none. On remand, the record should be further developed to determine whether claimant had a “recent attachment to the labor force” as discussed in UIPL 16-20 and any subsequent order should cite to the legal bases for all conclusions reached regarding claimant’s eligibility.

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 during the weeks at issue, Order No. 21-UI-164937 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-164937 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 15, 2021

¹ § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act applies to individuals who were scheduled to commence employment. The record here indicates that claimant intended to begin self-employment by restarting his own business. Therefore, if the record on remand shows that claimant met the criteria of § 2102(a)(3)(A)(ii)(I)(gg), he must do so by showing that he qualifies as a self-employed individual under § 2102(a)(3)(A)(ii)(I) of the CARES Act.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-164937 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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