

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0370

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On March 9, 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 2, 2020. Claimant filed a timely request for hearing. On April 20, 2021, ALJ S. Lee conducted a hearing, and on April 22, 2021 issued Order No. 21-UI-165390, affirming the March 9, 2021 administrative decision. On May 10, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Prior to the COVID-19 pandemic, claimant worked for her ex-husband to support his two businesses—a fine-arts photography business and a flooring business—for about 10 to 20 hours per week. Claimant did not have an ownership interest in either of the businesses, and her ex-husband paid her informally without issuing her a W-2 or otherwise reporting her income. The photography business experienced a downturn after the pandemic led craft fairs and similar events to shut down in March 2020. The flooring business also “pretty much shut down because of COVID.” Transcript at 16. Claimant’s ex-husband subsequently closed both businesses and eventually left the country.

(2) Claimant had two children, aged 7 and 15. In March 2020, the schools both of her children attended closed to in-person instruction due to the pandemic. While claimant’s older child could watch the younger child while school was out for the summer, claimant could not leave the younger child at home without adult supervision during the school year. Claimant’s friend was available to watch her younger child for a fee, but claimant did not want to retain her friend as a babysitter until claimant had secured employment.

(3) In May 2020, claimant was hired at a foodservice job. Claimant worked there for one day before she was admitted to the hospital for emergency heart surgery. Claimant later voluntarily quit the job because the employer felt that she was “high risk” as a result of her heart condition. Transcript at 10. Claimant required about a week to recuperate after the surgery, but after that point was able to work without restrictions.

(4) Other than the work claimant had performed for her ex-husband's businesses and the single day of employment she worked in May 2020, claimant did not have any other recent work history.

(5) On April 26, 2020, claimant filed an initial claim for regular unemployment insurance benefits. The Department disqualified claimant from receiving regular benefits because it found that she had voluntarily quit without good cause, and because it determined that she was not able to work.

(6) On July 12, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed benefits for the weeks from February 2, 2020 through February 27, 2021 and March 21, 2021 through April 3, 2021 (weeks 06-20 through 08-21 and 12-21 through 13-21). Those are 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 a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work; 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)(dd), (jj).

The record shows that claimant's primary work was for her ex-husband's two businesses, which closed at some point after the pandemic began. At hearing, claimant testified that both businesses suffered as a result of the pandemic, and her testimony that her ex-husband "shut down" both of the businesses afterwards suggests that the closures were the result of a downturn in business that resulted from the pandemic. However, while claimant may have been unemployed as a result of the pandemic, the record does not show that her place of employment was closed as a *direct* result of the pandemic as contemplated under the provisions of § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

Per USDOL guidance,¹ "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,

¹ U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 14.

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, while claimant testified that the photography business suffered due to the closure of art-sale venues, she did not show that the business itself was closed due any of the factors listed in 20 C.F.R. 625.5(c). She also did not offer information to show why the flooring business suffered due to the pandemic. Therefore, claimant has not shown that her place of employment closed as a direct result of the pandemic, and does not qualify as a “covered individual” under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

Similarly, while claimant was briefly employed in foodservice in May 2020, she separated from that job due to health reasons that were unrelated to the pandemic. Therefore, to the extent that claimant was unemployed as result of that work separation, she did not quit her job as a direct result of COVID-19 and was not a covered individual under § 2102(a)(3)(A)(ii)(I)(ii) of the CARES Act.

Finally, claimant suggested at hearing that her unemployment was at least partially the result of being unable to leave her younger child alone while school was in session. However, claimant also testified that she had available a friend who could watch her younger child, and that she did not retain the friend’s services only because she did not want to pay for them while she was not working. Therefore, while a child in claimant’s household for whom claimant had primary caregiving responsibility was unable to attend school that was closed as a result of the pandemic, claimant did not show that the school was required for claimant to be able to work, and claimant was therefore not a covered individual under § 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act.

For the above reasons, claimant was not eligible for PUA benefits during the weeks at issue.

DECISION: Order No. 21-UI-165390 is affirmed.

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

DATE of Service: June 15, 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 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 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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