

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0373

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On December 28, 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 2, 2020. On December 31, 2020, claimant filed a timely request for hearing.¹ On April 27, 2021, ALJ Snyder conducted a hearing and on April 30, 2021, issued Order No. 21-UI-165975, affirming the December 28, 2020 administrative decision and concluding that claimant was not eligible for PUA benefits for the weeks including September 20, 2020 through April 10, 2021. On May 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record. Claimant requested in her written argument that she be permitted to offer witness testimony and other information that was not part of the hearing record. Claimant 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.

FINDINGS OF FACT: (1) "For years," claimant assembled and sold jewelry. Transcript at 10. Due to COVID-19, claimant was not able to sell jewelry because she remained at home to limit her exposure to COVID-19.

(2) On October 28, 2020, claimant filed an initial claim for PUA benefits. Claimant told the Department that she had no work history, no proof of income, and no employment. Claimant's primary source of income was social security disability. Claimant claimed PUA benefits for each of

¹ The Office of Administrative Hearings (OAH) was not aware of claimant's December 31, 2020 request for hearing until March 23, 2021. On February 5, 2021, claimant filed another request for hearing. ALJ Kangas considered claimant's February 5, 2021 request and on March 16, 2021, issued Order No. 21-UI-162780 dismissing claimant's February 5, 2021 request as late. On April 5, 2021, OAH mailed claimant a letter stating that on March 23, 2021, it became aware of claimant's December 31, 2020 timely request for hearing, and that Order No. 21-UI-162780 was vacated and a hearing would be scheduled regarding the merits of the December 28, 2020 administrative decision.

the weeks including September 20, 2020 through April 10, 2021 (weeks 39-20 through 14-21). These are the weeks at issue. The Department did not pay claimant PUA benefits for any of the weeks at issue.

(3) During the weeks at issue, claimant intended to begin working as a driver for a ride sharing company, but claimant did not begin work for a ride sharing company during the weeks at issue because she did not have a valid driver's license.

(4) Two days per week during the weeks at issue, claimant cared for her sister's child who was unable to attend school in person due to COVID-19. Claimant's sister did not pay claimant for watching the child.

CONCLUSIONS AND REASONS: Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for the weeks including September 20, 2020 through April 10, 2021.

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 the following reasons:

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) 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;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) 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;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section.²

Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I).

The record does not show that claimant meets any of the criteria listed in § 2102(a)(3)(A)(ii)(I) of the CARES Act that would allow her to meet the definition of a "covered individual." Although claimant had plans to begin working as an Uber driver, claimant was not "scheduled to commence employment" per § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act because she did not have a license to drive a vehicle during the weeks at issue. Transcript at 5. For the same reason, claimant also was not working as an independent contractor per § 2102(a)(3)(A)(ii)(I)(kk). Similarly, while claimant provided caregiving services to her nephew, claimant does not qualify under § 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act because the child was not within claimant's household and claimant did not have primary caregiving responsibility for the child.

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

² Additional criteria established by the Secretary of Labor under Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(kk) includes "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." U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 13. Claimant did not work as an independent contractor during the weeks at issue.

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 assembled and sold jewelry during the weeks at issue. These 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). Claimant was not a “self-employed individual” because her primary reliance for income was on social security disability and was not on the performance of services in her own business, or on her own farm.

Because the Department did not pay benefits for the weeks at issue, claimant had the burden to prove that the Department should have paid claimant benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits). Claimant has not met that burden. 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, from September 20, 2020 through April 10, 2021.

DECISION: Order No. 21-UI-165975 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 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 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.

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