

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0375

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On February 10, 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 8, 2021, ALJ Scott conducted a hearing, and on April 13, 2021 issued Order No. 21-UI-164662, affirming the administrative decision. On April 29, 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, and did not show that factors or circumstances beyond claimant's reasonable control prevented him 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.

Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) For about three and a half years prior to the COVID-19 pandemic, claimant's work consisted of collecting bottles and cans and exchanging them for deposit returns, as well as trading in salvaged materials from construction and demolition sites. Claimant performed this work every day of the week, and did not perform any other work at the time.

(2) Claimant did not perform this work pursuant to a contract or other written agreement with the parties who allowed claimant to salvage these materials. Claimant did not file tax returns on the income he earned from this work. Claimant was given receipts for only a small percentage of the materials he turned in. Claimant did not have a bank account.

(3) Claimant relied on the use of his friend's truck to help him trade in these materials. Claimant did not own a vehicle.

(4) In March 2020, due to slowed construction and demolition work, restaurant closures, and temporarily-closed bottle-return machines which all resulted from the pandemic, claimant was no longer able to turn in the bottles and cans he collected, and was also unable to salvage materials from construction and demolition sites. Around that time, claimant's friend who owned a truck also became unavailable to help claimant deliver materials. As of April 8, 2021, the friend was still unavailable to help claimant.

(5) On July 28, 2020, claimant filed an initial claim for PUA benefits. Claimant did not include any documentation of his income from this work, or otherwise any documentation of the work he performed, with his initial claim. Claimant subsequently claimed benefits for the weeks including March 8, 2020 through April 3, 2021 (weeks 11-20 through 13-21). These are the weeks at issue. The Department did not pay claimant benefits for 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 other types of unemployment benefits 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)(i)-(ii). Thus, if an individual is not available for work because of a reason listed under § 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA. However, if an individual is not available for work by operation of applicable state law, the individual is not a "covered individual" under the Act and is therefore not eligible for PUA. *See* April 27, 2020 U.S. Dep't of Labor UI Program Letter at 12 ("Eligibility for PUA requires that the individual be able to work and available to work within the meaning of applicable state law, unless the individual is unable or unavailable . . . because of a reason listed under section 2102(a)(3)(A)(ii)(I) of the CARES Act, he or she would not be eligible for PUA.").

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be, in relevant part, capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities. OAR 471-030-0036(3)(b) (August 2, 2020 through December 26, 2020).

At hearing, claimant testified that he was unable to bring salvaged materials to recyclers because he did not have a vehicle available to him, as he had previously. Audio Record at 15:26. For that reason, claimant was not available for work under the meaning of OAR 471-030-0036(3)(b), as claimant's work required a vehicle, and he was therefore not capable of accepting or reporting for the work he performed without the use of one. Further, claimant did not offer evidence to show that his lack of availability was the result of one of the COVID-19 related reasons under § 2102(a)(3)(A)(ii)(I) of the CARES Act. As

the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden of proof to show that he was eligible for benefits for those weeks. *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 did not meet that burden. Therefore, claimant was not available for work under the operation of applicable state law and as such does not qualify as a “covered individual” under § 2102(a)(3) of the CARES Act.

Additionally, § 2102(d)(2) of the CARES Act provides, in relevant part, that “in the case of a covered individual who is self-employed . . . or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto. . .” In relevant part, 20 C.F.R. § 625.6 requires that, for benefits to be paid under the Disaster Unemployment Assistance (DUA) program—and therefore, through incorporation by reference, the PUA program,¹ “. . . the individual shall furnish documentation to substantiate the employment or self-employment or wages earned from or paid for such employment or self-employment or documentation to support that the individual was to commence employment or self-employment on or after the date the major disaster began,” and that “any individual who fails to submit documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment in accordance with paragraph (e)(1) of this section, shall be determined ineligible for the payment of DUA for any week of unemployment due to the disaster.” 20 C.F.R. § 625.6(e)(1), (2).

Claimant did not provide any documentation to substantiate the “employment or self-employment”² in which he was engaged prior to the pandemic, and his testimony that he did not maintain a bank account, file tax returns, or otherwise keep records of the income he derived from trading in bottles, cans, and other salvaged materials indicates that he is unable to do so. Thus, even if claimant had qualified as a covered individual as discussed above, he would have been ineligible to receive PUA benefits under § 2102(d)(2) of the CARES Act.

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

DECISION: Order No. 21-UI-164662 is affirmed.

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

DATE of Service: June 7, 2021

¹ See Pub. L. 116-136 § 2102(h). By operation of that paragraph, all above references to the DUA program refer to the PUA program for purposes of this matter.

² At hearing, the Department’s witness testified that claimant’s work activities were not “considered a valid self-employment activity under the PUA guidelines.” Audio Record at 7:50. The witness cited no authority for this assertion. Because claimant is ineligible for PUA benefits on other grounds, EAB does not here address the question of whether these activities constituted “self-employment” for purposes of § 2102 of the CARES Act.

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 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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