

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0401

Affirmed
No Redetermination of PUA Benefit Amount

PROCEDURAL HISTORY: On February 18, 2021, the Oregon Employment Department (the Department) served Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was eligible for 50 weeks of PUA benefits in the amount of \$205.00 per week, effective March 8, 2020. Claimant filed a timely request for hearing.¹ On April 28 and 30, 2021, ALJ Monroe conducted a hearing, and on May 7, 2021 issued Order No. 21-UI-166432, affirming the February 18, 2021 administrative decision. On May 18, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written arguments filed on May 18, 2021 and June 2, 2021 when reaching this decision. In his arguments, 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) Prior to the COVID-19 pandemic, claimant performed work as a delivery driver for On-Time Delivery. Claimant drove 56,749 miles for work during 2019. Exhibit 1 at 10. Claimant was classified as a self-employed independent contractor and paid via form 1099-MISC. For

¹ On April 27, 2020, the Department served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant did not have sufficient earnings in his base year to qualify for a valid regular unemployment insurance claim. Exhibit 1 at 13. On May 7, 2020, the WPBR became final without claimant having filed a request for hearing. On February 8, 2021, claimant filed a request for hearing in which he claimed that his benefit amount had been determined incorrectly, which was construed as a request for hearing on the April 27, 2020 WPBR. Exhibit 1 at 4. On March 3, 2021, ALJ Kangas issued Order No. 21-UI-161973, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 17, 2021. On March 10, 2021, claimant filed a response to the appellant questionnaire in which he stated that he had been "actively disputing [his] PUA benefit amount," which was construed as a timely request for hearing on the February 18, 2021 Determination for PUA. Exhibit 1 at 6, 44. On April 8, 2021, ALJ Kangas issued Order No. 21-UI-164402, re-dismissing claimant's late request for hearing on the April 27, 2020 WPBR. On April 28, 2021, Order No. 21-UI-164402 became final without claimant having filed an application for review of that order with the Employment Appeals Board (EAB).

tax year 2019, claimant was paid \$32,680.79 for his work with On-Time Delivery, which was reported as non-employee compensation.

(2) When claimant filed his federal tax return for tax year 2019, he reported on Schedule C to Form 1040 that he had gross income in the amount of \$32,681.00 and total expenses in the amount of \$38,601.00, including \$33,111 in reported “Car and truck expenses.” Exhibit 1 at 9. As a result, claimant reported that his net loss from his business for tax year 2019 was \$5,920.00. Claimant did not have any other income during 2019.

(3) On April 30, 2020, claimant filed an initial claim for PUA benefits. The Department had previously determined that claimant was ineligible for regular benefits. The Department determined that claimant’s base year for PUA benefits was the 2019 calendar year, and that claimant was eligible for 50 weeks of PUA benefits with a weekly benefit amount (WBA) of \$205.00. \$205.00 is the minimum WBA for eligible PUA claimants. April 28, 2021 Transcript at 14.

(4) Claimant claimed benefits for the weeks from March 8, 2020 through December 12, 2020 and December 27, 2020 through April 24, 2021 (weeks 11-20 through 50-20 and weeks 53-20 through 16-21), the weeks at issue. The Department paid claimant benefits for the weeks from March 15, 2020 through December 12, 2020 and December 27, 2020 through April 10, 2021 (weeks 12-20 through 50-21 and weeks 53-20 through 14-21).

CONCLUSIONS AND REASONS: Claimant’s request for redetermination of his PUA benefit amount is denied. Claimant did not have sufficient net income during the base year to qualify for a higher PUA benefit amount.

Under the CARES Act, Pub. L. 116-136, benefits payable under the PUA program to a “covered individual” (as defined under § 2102(a) of the Act) who is self-employed “. . . shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto. . .” Pub. L. 116-136, § 2102(d)(2). In relevant part, that regulation requires that “the base period to be utilized in computing the [PUA] weekly amount shall be the most recent tax year that has ended for the individual” and that “the self-employment income to be treated as wages for purposes of computing the weekly amount . . . shall be the *net* income reported on the tax return of the individual as income from all self-employment . . .” 20 C.F.R. 625.6(a)(2) (emphasis added). Further guidance from the US Department of Labor (USDOL) states that “The monetary determination for a self-employed individual must be based on proof of net income . . . [and that] if the state is unable to determine net income based on the proof provided, the individual will receive the minimum PUA WBA.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), Change 2, at 5–6.

The record shows that claimant filed his initial claim for PUA benefits in 2020. Because 2019 was the most recent tax year that had ended at the time claimant filed his initial claim, claimant’s base year for determining his PUA benefit amount is tax year 2019. Because claimant was classified as an independent contractor (or self-employed), 20 C.F.R. 625.6(a)(2) and guidance issued by USDOL, as discussed above, requires claimant’s benefit amount to be calculated based on his net income. Claimant reported a net loss of \$5,920.00 on his 2019 tax return. Claimant did not provide any tax information showing a different net income amount. Therefore, the record suggests that, more likely than not,

claimant effectively had negative income for tax year 2019, and thus no wages² that would qualify him for a WBA higher than the minimum WBA under the PUA program. Further, even if the record did not conclusively show that claimant had negative income for tax year 2019, because claimant has not provided documentation which would allow the Department to determine what his net income was, claimant would still not be eligible for a higher WBA amount. Therefore, the order under review correctly determined that claimant was eligible to receive the minimum PUA WBA of \$205.00.

In his written argument, claimant identified several bases for asserting that he should be eligible for a higher WBA. First, claimant asserted that it was “unfair” to determine his PUA WBA based on the net loss shown on his tax return because, as an independent contractor using his personal vehicle for work, he is entitled to deduct his mileage from his gross profits when filing his tax return. Claimant’s Written Argument June 2, 2021 at 2. Whether claimant is entitled to deduct his business expenses on his federal tax return is beyond the scope of EAB’s review. However, regardless of any consideration of the “fairness” of such an outcome, the federal statutes and regulations which determine how PUA benefits are calculated mandate, as discussed above, that net, and not gross, income must be used for self-employed individuals.

Next, claimant asserted that he “receives compensation, not net or gross pay” for the work he performed for On-Time Delivery. Claimant’s Written Argument June 2, 2021 at 4. This assertion is similarly unpersuasive, as the Internal Revenue Service defines “gross income” to include “all income from whatever source derived, including . . . *compensation* for services, including fees, commissions, fringe benefits, and similar items; and gross income derived from business.” 26 U.S.C. § 61(a)(1), (2) (emphasis added). For that reason, the record shows that claimant’s 2019 non-employee compensation, as shown on his 1099-MISC form, was “gross income,” and that the \$5,920.00 loss shown on his tax return, after deductions, was more likely than not his net income for that year. Similarly, claimant suggested that it was “unfair” to disregard the fact that claimant and his wife file a joint tax return when considering claimant’s total income. Claimant’s Written Argument June 2, 2021 at 2. However, PUA benefits are not determined on the basis of jointly-earned income. Rather, they are determined, for purposes of a self-employed individual, on the basis of “. . . net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services *by the individual.*” 20 C.F.R. 625.6(a)(2). Thus, any income reported on claimant’s joint tax return which was earned by his spouse, or any person other than him, cannot be used in determining his benefit amount.

Finally, in his written argument, claimant asserted that, based on a conversation he had with a Department representative on April 22, 2021, claimant should have been classified as an employee of On-Time Delivery rather than an independent contractor (which might result in his being eligible for regular UI benefits rather than PUA, potentially at a higher WBA). Claimant’s Written Argument June 2, 2021 at 2. Regardless, the record as developed does not contain sufficient information to determine whether claimant’s work for On-Time Delivery should have been classified as subject employment, or whether claimant was correctly classified as an independent contractor.³ Moreover, the question of whether claimant or his wages were correctly classified was not at issue in the administrative decision, the ALJ did not accept jurisdiction over that issue at hearing, and addressing the issue at hearing would

² For a self-employed individual, “wages” means net income for services performed in self-employment. See 20 C.F.R. 625.2(u).

³ See ORS 657.040; ORS 670.600

have been inappropriate because the additional interested party to that issue (On-Time Delivery) was not provided notice of the matter. For those reasons, the issue has not been properly raised on appeal and EAB therefore lacks jurisdiction to address it in this decision. EAB also notes that claimant spoke to a representative from the Department's Tax section on April 26, 2021 regarding the question of whether he was correctly classified, and that the Tax section subsequently made a determination prior to the April 30, 2021 hearing continuation that claimant was correctly classified as an independent contractor. Transcript April 30, 2021 at 11, 32. If claimant wishes to appeal the Tax determination that he was correctly classified as an independent contractor, he may do so according to the appeal instructions on that determination.

For the above reasons, claimant's PUA WBA was correctly determined to be \$205.00, and his request for redetermination of that amount is denied.

DECISION: Order No. 21-UI-166432 is affirmed.

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

DATE of Service: June 25, 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 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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