

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0426

Affirmed ~ Late Request for Hearing Allowed
Modified in Part, Reversed and Remanded in Part
(Eligible for Pandemic Unemployment Assistance Weeks 36-20 through 39-20)

PROCEDURAL HISTORY: On January 13, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective July 5, 2020. On January 21, 2021, claimant filed a request for hearing which the Department did not process.¹ On February 2, 2021, the January 13, 2021 administrative decision became final. On March 1, 2021, claimant filed a second, late request for hearing. On March 24, 2021, ALJ Kangas issued Order No. 21-UI-163367, dismissing claimant's March 1, 2021 request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 7, 2021. On March 31, 2021, claimant filed a timely response to the appellant questionnaire.²

On April 26, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 10, 2021 to consider claimant's late request for hearing and, if allowed, the merits of the January 13, 2021 administrative decision. On May 10, 2021, ALJ Frank conducted a hearing and on May 13, 2021 issued Order No. 21-UI-166792, concluding that claimant's request for hearing on January 21, 2021 was timely, and modifying the January 13, 2021 administrative decision by concluding that claimant was eligible for PUA benefits for the weeks including August 30, 2020 through September 26, 2020 (weeks 36-20 through 39-20) but was not eligible for PUA benefits for the weeks including July 26, 2020 through August 29, 2020 (weeks 31-20 through 35-20), and September 27, 2020 through April 24, 2021 (weeks 40-20 through 16-21). On June 1, 2021, claimant filed an application for review of Order No. 21-UI-166792 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

¹ Order No. 21-UI-166792 at 2.

² The Office of Administrative Hearings is presumed to have vacated Order No. 21-UI-163367 following receipt of claimant's timely appellant questionnaire response.

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. EAB considered claimant's argument to the extent it was based on the record.

Claimant may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant's request for hearing on the January 13, 2021 administrative decision was timely filed is **adopted**. The remainder of this decision addresses claimant's PUA eligibility.

FINDINGS OF FACT: (1) Prior to the onset of the COVID-19 pandemic, claimant had used public transportation to get to work. Beginning on July 10, 2020, claimant experienced difficulty using public transportation because, due to local restrictions put into place following the onset of the COVID-19 pandemic, only ten people could ride the bus at a time.

(2) From September 2, 2020 until September 22, 2020, claimant suffered from an illness with symptoms related to COVID-19 and was placed under the care of a doctor, from whom claimant sought a diagnosis that he had a COVID-19 infection.

(3) At least as early as September 2020, claimant had type II diabetes. Claimant's diabetes put him at high risk of developing complications from COVID-19.

(4) On August 17, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed benefits for the weeks including July 26, 2020 through April 24, 2021 (weeks 31-20 through 16-21). These are the weeks at issue. The Department paid claimant benefits for weeks 31-20 through 50-20. The Department did not pay claimant benefits for weeks 51-20 through 16-21.

CONCLUSIONS AND REASONS: Claimant is eligible for PUA benefits for the weeks including August 30, 2020 through September 26, 2020 (weeks 36-20 through 39-20). Order No. 21-UI-166717 is reversed and remanded as to all other weeks at issue 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, except the individual is unemployed, partially

unemployed, or unable or unavailable to work because” of one or more of eleven listed reasons that relate to the COVID-19 pandemic. Pub. L. 116-136, § 2102(a)(3)(A).

Those reasons include that “the individual . . . is experiencing symptoms of COVID-19 and seeking a medical diagnosis[.]” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(aa). Another reason is that “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[.]” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(ff). An example that satisfies this criteria is “[a]n individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at I-5. Another one of the reasons listed under the CARES Act is 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.” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(gg).

The order under review concluded that claimant was eligible to receive PUA benefits for August 30, 2020 through September 26, 2020 (weeks 36-20 through 39-20), because, during those weeks claimant was “experiencing symptoms of COVID-19 and seeking a medical diagnosis.” Order No. 21-UI-166792 at 4. The record supports this conclusion. The order under review further concluded that claimant was not eligible to receive PUA benefits for the weeks including July 26, 2020 through August 29, 2020 (weeks 31-20 through 35-20), and September 27, 2020 through April 24, 2021 (weeks 40-20 through 16-21), because claimant did not meet any of the COVID-19 impact reasons listed in the Act for those weeks. Order No. 21-UI-166792 at 4. The record as developed does not support this conclusion.

On remand, The ALJ should ask questions to assess, on a week-by-week basis, the applicability to weeks 31-20 through 35-20 and weeks 40-20 through 16-21 of § 2102(a)(3)(A)(ii)(I)(ff) and (gg), as well as the other reasons listed under § 2102(a)(3)(A)(ii)(I) of the Act. As to § 2102(a)(3)(A)(ii)(I)(ff), the record should be developed to determine, during weeks 31-20 through 35-20 and weeks 40-20 through 16-21, whether claimant had a place of employment but was unable to reach it because his immune system was compromised by virtue of his diabetes and he was therefore advised by a health care provider to self-quarantine to avoid the health risks he faced from COVID-19. As to § 2102(a)(3)(A)(ii)(I)(gg), the ALJ should ask questions to determine, during weeks 31-20 through 35-20 and weeks 40-20 through 16-21, whether claimant was scheduled to commence employment but did not have a job or was unable to reach the job as a direct result of the COVID-19 public health emergency.

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 including 31-20 through 35-20 and weeks 40-20 through 16-21, Order No. 21-UI-166717 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-166792 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 9, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-166792 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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