

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0545

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On May 20, 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 March 8, 2020. Claimant filed a timely request for hearing. On June 22, 2021, ALJ Monroe conducted a hearing, and on June 24, 2021 issued Order No. 21-UI-169399, affirming the May 20, 2021 administrative decision by concluding that claimant was not eligible for PUA benefits from March 8, 2020¹ through June 27, 2020 (weeks 11-20 through 26-20), and July 19, 2020 through June 19, 2021 (weeks 30-20 through 24-21). On July 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From May 7, 2013 until February 28, 2020, claimant was incarcerated in federal prison in California. For most of the period of her incarceration, claimant worked as a customer service representative through the UNICOR program. Claimant last performed services through UNICOR on January 12, 2020. The wages claimant earned through the UNICOR program were either not subject to unemployment insurance tax or were otherwise insufficient to allow claimant to qualify for a regular unemployment insurance claim.

(2) Claimant suffered from multiple chronic respiratory conditions including chronic obstructive pulmonary disease (COPD), emphysema, asthma, and bronchitis.

(3) On February 28, 2020, claimant returned to Oregon, where she had resided prior to her incarceration. Thereafter, claimant's physician determined that, due to her respiratory conditions, it was "medically necessary that [claimant] remain unemployed and follow strict quarantine guidelines" to avoid complications from contracting COVID-19 "until the COVID-19 pandemic is under control or until there is a vaccine." Exhibit 2 at 2. Claimant had previously intended to find work once she was released from prison, but was unable to do so because her physician directed her to self-quarantine.

¹ The order under review concluded that the weeks at issue began on March 28, 2020. Order No. 21-UI-169399 at 5. However, the witness for the Department testified at hearing that the weeks at issue began on March 8, 2020. Transcript at 5. The March 28, 2020 date cited in the order under review therefore is presumed to be a typographical error.

(4) On July 21, 2020, claimant filed an initial application for PUA benefits. Claimant claimed benefits for the weeks of March 8, 2020 through June 27, 2020 (weeks 11-20 through 26-20) and July 19, 2020 through June 19, 2021 (weeks 30-20 through 24-21). Those are the weeks at issue. The Department paid claimant benefits for all of the weeks at issue through April 17, 2021 (week 15-21), and denied claimant benefits for the remaining 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 “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 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 (PEUC), so long as they otherwise satisfy the requirements listed under § 2102(a)(3)(A)(ii)(I) of the Act. Pub. L. 116-136, § 2102(a)(3)(A)(ii)(II). In interpreting and applying § 2102(a)(3)(A)(ii)(II) of the CARES Act, the U.S. Department of Labor has determined that where an individual does not have wages in the base period, the individual “the individual must meet the requirements under section 2102(a)(3)(A)(ii)(I) of the CARES Act—he or she must be unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons. The individual must have an attachment to the labor market and must have experienced a loss of wages and hours or was unable to start employment following a bona fide job offer.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) at 9.

The record shows that claimant was unable to work because her physician ordered her to self-quarantine due to concerns related to COVID-19. Despite this fact, claimant does not meet the definition of a “covered individual” under § 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act because at the time she was ordered to quarantine, she was already unemployed and therefore did not have a “place of employment” that she was unable to reach. Claimant did not offer evidence to show that she met any of the other 11 provisions of § 2102(a)(3)(A)(ii)(I) of the CARES Act that would allow her to qualify as a “covered individual.” Similarly, while claimant lacked sufficient work history to qualify for regular benefits, extended benefits, or PEUC, the record does not show that she experienced a loss of wages and hours, or was unable to start employment following a bona fide job offer, because claimant neither had a job nor had been offered a job at the time that she was ordered to quarantine. Claimant therefore did not qualify as a “covered individual” under § 2102(a)(3)(A)(ii)(II) of the CARES Act.

For the above reasons, claimant was not a “covered individual” under § 2102 of the CARES Act, and therefore is not eligible for PUA benefits during the weeks at issue.

DECISION: Order No. 21-UI-169399 is affirmed.

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

DATE of Service: August 9, 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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