

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0610

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On April 26, 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 15, 2020. Claimant filed a timely request for hearing. On July 2, 2021, ALJ Monroe conducted a hearing, and on July 9, 2021 issued Order No. 21-UI-170129, affirming the April 26, 2021 administrative decision and concluding that claimant was not eligible for PUA benefits for the weeks including March 29, 2020 through June 26, 2021 (weeks 14-20 through 25-21). On July 26, 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 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. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On March 3, 2020, claimant quit her job with Home Depot because she was dissatisfied with her work schedule.

(2) On March 24, 2020, claimant filed an initial claim for regular unemployment insurance benefits, which the Department determined was monetarily valid. However, the Department also determined that her voluntary leaving from Home Depot was without good cause, disqualifying her from receiving regular benefits effective March 1, 2020 and until such time as she earned an amount in subject employment that equaled or exceeded four times her weekly benefit amount. Subsequently, claimant did not earn sufficient wages to end her disqualification.

(3) On June 3, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed benefits under her PUA claim for each of the weeks including March 29, 2020 through June 26, 2021 (weeks 14-20 through 25-21), the weeks at issue. The Department paid claimant PUA benefits for weeks 14-20 through 16-21, but did not pay her PUA benefits for the remaining weeks at issue.

(4) During the weeks at issue, claimant sought work primarily in the restaurant industry but was unsuccessful in finding work because many businesses were closed or not hiring due to the COVID-19 pandemic.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits for the weeks including March 29, 2020 through June 26, 2021 (weeks 14-20 through 25-21).

To be eligible to receive PUA benefits under the CARES Act, 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).

The record shows that on March 24, 2020, claimant filed a monetarily valid claim for regular unemployment insurance benefits. However, the Department also determined that her work separation from Home Depot disqualified her from receiving regular benefits effective March 1, 2020 and until such time as she earned an amount that equaled or exceeded four times her weekly benefit amount. The record fails to show that claimant earned the amount of wages required to end the disqualification period prior to the weeks at issue. More likely than not, claimant was not entitled to receive any other state or federal unemployment compensation during the weeks at issue. Accordingly, the valid claim for regular benefits established on March 24, 2020 did not operate to exclude her from being considered a "covered individual" because her disqualification was sufficient to render her ineligible for regular benefits and there is no indication from the record that she was eligible for extended benefits or pandemic emergency unemployment compensation. *See* Pub. L. 116-136, § 2102(a)(3)(A)(i); *See also*, U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (Apr. 27, 2020) at I-8 (explaining that where an individual is disqualified on a claim because of a job separation that occurred prior to the individual's unemployment due to COVID-19 and must earn requalifying wages before being considered eligible for regular benefits, the individual may be eligible for PUA benefits so long as he or she is unemployed, partially unemployed, or unable or unavailable to work because of at least one of the COVID-19 related reasons listed in the CARES Act).

The next issue to be determined under the CARES Act is whether claimant was unemployed or unable or unavailable to work during the weeks at issue because of any of the qualifying COVID-related reason described at § 2102(a)(3)(A)(ii)(I)(aa)-(kk) of the Act. The record fails to show that claimant meets any of the criteria listed in those sections that would allow her to meet the definition of a “covered individual” that is eligible for PUA benefits. Clarification that the U.S. Department of Labor has provided on item (kk) as to what constitutes acceptable COVID-19 related reasons for being unemployed or precluded from working under that section is particularly relevant to the inquiry here. The record shows that although on her initial application for PUA benefits, claimant denied that she was unemployed due to any “COVID-qualifying circumstance,” she also explained that she “[was] seeking employment when the pandemic happened” and found it difficult to find a job because “most of the food

and beverage industry places [where she was seeking work were] closed . . . and . . . not hiring” due to the COVID-19 public health emergency. Transcript at 6. The U.S. Department of Labor clarification shows that an individual, such as claimant, who has become unemployed for reasons unrelated to COVID-19 and is thereafter unable to find work because businesses have closed or are not hiring due to COVID-19 is not eligible for PUA. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) at I-6 (“An individual is only eligible for PUA if the individual is otherwise able to work and available for work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.”).

Because the Department paid claimant PUA benefits for weeks 14-20 through 16-21, the Department had the burden to prove that benefits should not have been paid and because the Department did not pay claimant PUA benefits for weeks 17-21 through 25-21, claimant had the burden to prove that benefits should have been paid. *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). The Department met its burden, but claimant did not meet her 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 March 29, 2020 through June 26, 2021 (weeks 14-20 through 25-21).

DECISION: Order No. 21-UI-170129 is affirmed.

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

DATE of Service: August 30, 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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