

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0638

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On February 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 February 2, 2020. Claimant filed a timely request for hearing. On July 22, 2021, ALJ Frank conducted a hearing, and on July 29, 2021 issued Order No. 21-UI-171393, affirming the February 26, 2021 administrative decision. On August 2, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) In 2019, claimant filed an initial claim for regular unemployment insurance benefits (Regular UI). The Department determined that claimant had a monetarily valid Regular UI claim with a weekly benefit amount of \$239, and that her claim would expire on August 29, 2020 (BYE 35-20).

(2) Later in 2019, the Department determined that claimant had a work separation from an employer, which disqualified claimant from receiving Regular UI benefits until she earned sufficient wages to requalify for Regular UI benefits.

(3) Claimant became employed again, and by the end of January 2020, had earned sufficient wages to end her disqualification from Regular UI benefits. However, claimant was unaware that she had requalified to receive Regular UI benefits.

(4) By August 29, 2020, when claimant's claim for Regular UI benefits expired, claimant had earned sufficient wages to qualify for a new monetarily valid claim for Regular UI benefits with a weekly

benefit amount of \$157. However, claimant remained unaware that she qualified for Regular UI benefits and did not file a new initial claim for Regular UI benefits.

(5) On October 29, 2020, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA). Claimant claimed PUA benefits for each of the weeks including February 2, 2020 through March 6, 2021 (weeks 06-20 through 09-21), the weeks at issue. The Department did not pay claimant benefits for those weeks.

CONCLUSIONS AND REASONS: Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for each of the weeks including February 2, 2020 through March 6, 2021 (weeks 06-20 through 09-21).

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(b). In pertinent part, the Act defines a “covered individual” as “an individual who . . . is not eligible for regular compensation . . . under State or Federal law . . . *including an individual who has exhausted all rights to regular unemployment . . . under State or Federal law[.]*” Pub. L. 116-136, § 2102(a)(3)(A)(i) (italics added). Thus, if an individual has not exhausted all rights to Regular UI benefits, they do not constitute a “covered individual” and are not entitled to receive PUA benefits.

The Department did not pay claimant PUA benefits for the weeks at issue and for that reason 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). Claimant did not meet her burden.

Claimant was not entitled to receive PUA benefits for the weeks at issue because she was eligible for Regular UI benefits for the weeks including February 2, 2020 through March 6, 2021. The Department determined that claimant’s 2019 claim for Regular UI benefits was monetarily valid with a weekly benefit amount of \$239 and that it would expire on August 29, 2020 (BYE 35-20). Although claimant experienced a work separation from employment that disqualified her from receiving Regular UI benefits, by the end of January 2020 and before the weeks for which she claimed PUA benefits, claimant had earned sufficient wages to requalify to receive Regular UI benefits. The Department also determined that if claimant had filed a new initial claim when her Regular UI claim expired on August 29, 2020, the new initial claim would have been monetarily valid with a weekly benefit amount of \$157. Accordingly, for each of the weeks at issue, claimant was eligible to receive Regular UI benefits. Because claimant was eligible for Regular UI benefits and had not exhausted all of her rights to those benefits for the weeks at issue, claimant was not a “covered individual” as that term is defined by the CARES Act during the weeks including February 2, 2020 through March 6, 2021.

For these reasons, claimant was not entitled to receive PUA benefits for each of the weeks including February 2, 2020 through March 6, 2021 (weeks 06-20 through 09-21).

DECISION: Order No. 21-UI-171393 is affirmed.

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

DATE of Service: September 2, 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 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 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.

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