

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0678

Affirmed

Ineligible for Pandemic Unemployment Assistance weeks 15-20 through 18-20

PROCEDURAL HISTORY: On February 9, 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 28, 2021, ALJ Wyatt conducted a hearing, and on August 5, 2021 issued Order No. 21-UI-171959, affirming the February 2, 2021 administrative decision and concluding that claimant was not eligible to receive PUA benefits from April 5, 2020 through May 2, 2020 (weeks 15-20 through 18-20). On August 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Beginning in 1999 and continuing throughout the period relevant to this decision, claimant was employed as a flight attendant.

(2) In March 2020, immediately following the onset of the COVID-19 pandemic, the airline that employed claimant offered her a voluntary unpaid medical leave of absence because her husband had a compromised immune system and claimant was concerned about the risk of exposing him to COVID-19.

(3) Claimant accepted her employer's offer and took the voluntary unpaid medical leave from mid-March 2020 through April 30, 2020. Claimant was free to decline the voluntary leave and continue working if she wished. Work for claimant's employer was available during claimant's voluntary leave period. No healthcare provider ever advised claimant to quarantine or otherwise seek a leave of absence because of her husband's condition.

(4) On May 4, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed PUA benefits for the weeks from April 5, 2020 through May 2, 2020 (weeks 15-20 through 18-20). These are the weeks at issue. The Department did not pay claimant PUA benefits for any of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for the weeks including April 5, 2020 through May 2, 2020 (weeks 15-20 through 18-20).

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. § 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. § 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.” § 2102(a)(3)(A)(ii)(I)(ff). Another reason is that “the individual meets any additional criteria established by the Secretary [of Labor] for unemployment assistance under this section.” § 2102(a)(3)(A)(ii)(I)(kk). Relevant additional criteria established by the Secretary of Labor includes “[a]n individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 health emergency.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 5 (Feb. 25, 2021) at 8.

Claimant did not establish that she constituted a “covered individual” entitled to PUA benefits during the weeks at issue because the circumstances of claimant’s voluntary leave of absence do not satisfy any of the COVID-19 related reasons enumerated under the CARES Act or federal guidance. For example, the record does not support eligibility for PUA under sub clause (a)(3)(A)(ii)(I)(ff), that is, on a theory that claimant was unable to reach her place of employment due to being advised by a health care provider to self-quarantine due to concerns related to COVID-19. Claimant failed to establish eligibility under this provision, among other reasons, because the record shows that she was never advised by a health care provider to self-quarantine.

Likewise, the record does not support eligibility for PUA on a theory that, during the weeks at issue, claimant’s hours were reduced or she was laid off as a direct result of the COVID-19 public health emergency. The record shows that the hours claimant worked during the weeks at issue were reduced to zero because she took a voluntary leave of absence, not because the employer reduced her hours as a direct result of the COVID-19 public health emergency. Further, the record shows that claimant was not laid off as a direct result of the COVID-19 public health emergency during the weeks at issue but rather, took a voluntary leave of absence during those weeks.

For these reasons, claimant did not constitute a “covered individual” for purposes of § 2102(a)(3) of the CARES Act and was not eligible to receive PUA benefits for weeks 15-20 through 18-20.

DECISION: Order No. 21-UI-171959 is affirmed.

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

DATE of Service: September 22, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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