

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0683

Modified
Late Request for Hearing Allowed
PUA Benefits Allowed Weeks 16-20 through 06-21 and Weeks 15-21 through 18-21

PROCEDURAL HISTORY: On February 4, 2021, the Oregon Employment Department (the Department) served a Notice of Determination of Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective February 2, 2020. On February 24, 2021, the February 4, 2021 administrative decision became final without claimant having filed a request for hearing. On March 10, 2021, claimant filed a late request for hearing on the February 4, 2021 administrative decision. ALJ Kangas considered claimant's request, and on April 5, 2021 issued Order No. 21-UI-164147, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 19, 2021. On April 18, 2021, claimant filed a timely response to the appellant questionnaire. On April 29, 2021, the Office of Administrative Hearings (OAH) served notice on claimant that Order No. 21-UI-164147 was vacated, and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing on the February 4, 2021 administrative decision and, if so, the merits of that decision. On May 28, 2021, ALJ Monroe conducted a hearing, and on June 2, 2021 issued Order No. 21-UI-167965, re-dismissing claimant's request for hearing as late without a showing of good cause and leaving the February 4, 2021 administrative decision undisturbed. On June 13, 2021, claimant filed a timely application for review of Order No. 21-UI-167965 with the Employment Appeals Board (EAB). On July 9, 2021, EAB issued EAB decision 2021-EAB-0466, reversing Order No. 21-UI-167965 and remanding the matter for further development of the record to determine whether claimant had good cause to file the late request and, if so, the merits of the February 4, 2021 administrative decision.

On August 2, 2021, ALJ Monroe conducted a hearing. On August 10, 2021, ALJ Monroe issued Order No. 21-UI-172268, concluding that claimant had good cause to file the late request for hearing and affirming the February 4, 2021 administrative decision by concluding that claimant was not eligible for PUA benefits for the weeks including February 16, 2020 through February 13, 2021 (weeks 08-20 through 06-21) and April 11, 2021 through May 8, 2021 (weeks 15-21 through 18-21). On August 23, 2021, claimant filed a timely application for review of Order No. 21-UI-172268 with EAB.

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of statements claimant made in his written argument and documentation attached to the written argument, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The additional evidence is necessary to complete the record under OAR 471-041-0090(1)(a). Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

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 had good cause to file a late request for hearing is **adopted**. The remainder of this decision addresses claimant's eligibility for PUA benefits.

FINDINGS OF FACT: (1) On April 15, 2020, claimant was scheduled to commence full-time employment with Pietro's Pizza. Due to government mandates imposed as a result of the COVID-19 pandemic, Pietro's Pizza rescinded the job offer they had offered to claimant.

(2) Between February 16, 2020 and March 14, 2020, claimant performed odd jobs such as mowing lawns and cleaning houses. Claimant was paid for the work in cash, and he did not keep records of the work he performed or payment he received for it.

(3) On August 15, 2020, claimant filed an initial claim for PUA benefits. The Department later determined that claimant did not have sufficient base-year wages to establish a valid claim for regular unemployment insurance benefits. Claimant subsequently claimed PUA benefits for the weeks including February 16, 2020 through February 13, 2021 (weeks 08-20 through 06-21) and April 11, 2021 through May 8, 2021 (weeks 15-21 through 18-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) On July 1, 2021, the Department advised claimant to submit an affidavit from Pietro's Pizza attesting that claimant had been offered a job. Claimant attempted to obtain an affidavit from the employer, but was unable to do so by the date of the August 2, 2021 hearing.

CONCLUSIONS AND REASONS: Claimant was eligible for PUA benefits for the weeks including April 12, 2020 through February 13, 2021 (weeks 16-20 through 06-21) and April 11, 2021 through May 8, 2021 (weeks 15-21 through 18-21). Claimant was not eligible for PUA benefits for the weeks including February 16, 2020 through April 11, 2020 (weeks 08-20 through 15-20).

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). Those reasons include, in relevant part, 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). Guidance from the U.S. Department of Labor states that this reason is satisfied where “[a]n individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) at 12.

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, so long as they otherwise satisfy the requirements set forth under section 2102(a)(3)(A)(ii)(I) of the Act. Pub. L. 116-136, § 2102(a)(3)(A)(ii)(II).

On December 27, 2020, the Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (“Continued Assistance Act”), was signed into law and included certain changes to the PUA program through amendment of the CARES Act, as addressed herein. An individual who receives a payment of PUA benefits on or after December 27, 2020 (the enactment date of the Continued Assistance Act), is required to submit documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment. This includes any individual who receives any PUA payment on or after December 27, 2020, even if the payment is for a week of unemployment that occurred before that date. Such individuals must provide documentation within 90 days of the date on which the individual initially applied for benefits or the date the individual is instructed to provide such documentation by the state agency (whichever date is later). U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (UIPL 16-20), Change 4, (Jan. 8, 2021) at 17–18. Proof of the planned commencement of employment includes, but is not limited to, letters offering employment, and statements/affidavits by individuals (with name and contact information) verifying an offer of employment. *Id* at 18.

The order under review concluded that claimant was not eligible for PUA benefits because, while he had more likely than not planned to begin working for Pietro’s Pizza, he had not submitted any documentation to substantiate his claim that that he had been offered the job. Order No. 21-UI-172268 at 8. However, claimant attached to his written argument a handwritten letter signed by an individual whom claimant identified as the president of Pietro’s Pizza. EAB Exhibit 1 at 1–2. The handwritten statement indicated that claimant had “applied for employment with Pietro’s Restaurant Group Inc. on or about 4/15/2020,” and that he “went through the interview process, but the decision was made not to finalize his employment due to adverse effects of the COVID pandemic & COVID mandates.” EAB Exhibit 1 at 2. The statement also included the president’s name and contact information. Claimant submitted the written argument and statement from the employer on August 31, 2021. Because the employer’s written statement verified the offer of employment and included the president’s name and contact information, the documentation constitutes “proof of the planned commencement of employment” per U.S. Department of Labor (USDOL) guidance, as discussed above.

Further, the record shows that claimant submitted the documentation timely. At hearing, the Department’s witness testified that although she was uncertain of what deadline the Department had given claimant to submit the documentation, it had passed as of the date of the hearing. Transcript at 77.

The record otherwise contains no indication that the Department had instructed claimant to provide the documentation prior to July 1, 2021. Therefore, the record shows that, more likely than not, claimant was first so advised on July 1, 2021. As a result, the deadline for claimant to submit the documentation was 90 days after the Department instructed claimant to submit it, or September 29, 2021. Because claimant submitted it on August 31, 2021, the documentation was timely submitted.

The record contains some disparities regarding when claimant was actually scheduled to commence employment with Pietro's Pizza. At hearing, the Department's witness testified that claimant had indicated on his initial claim that he had been scheduled to start work on March 24, 2020. Transcript at 50. In their written statement, the employer noted that claimant had "applied for" employment on April 15, 2020 and had "gone through the interview process." EAB Exhibit 1 at 2. In his written argument, claimant asserted that the employer had made a mistake in the written statement, and that his planned start date was March 15, 2020. EAB Exhibit 1 at 1. When read with claimant's written argument and his testimony that he had already received his uniform and was ready to begin orientation,¹ it is reasonable to conclude that the employer meant that claimant had been *scheduled to start* on April 15, 2020. Because claimant did not provide any additional documentation to substantiate the March 15, 2020 start date, the record shows that, more likely than not, claimant was scheduled to commence employment on April 15, 2020. Because claimant did not commence employment because the employer with whom he was scheduled to commence employment rescinded the job offer as a direct result of the COVID-19 pandemic, claimant is eligible for PUA benefits under § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act beginning the week of April 12, 2020 (week 16-20) and all subsequent weeks at issue.

Regarding eligibility for weeks prior to week 16-20, the record shows that claimant performed odd jobs for the weeks including February 16, 2020 through March 14, 2020 (weeks 08-20 through 11-20). The record does not show that claimant stopped performing this work for one of the reasons specified under § 2102(a) of the CARES Act. However, even assuming that he did, claimant has not, as of the date of this decision, submitted documentation to substantiate that the odd jobs he performed during that time constituted self-employment.² For that reason, under the Continued Assistance Act and guidance issued by USDOL, as discussed above, claimant is not eligible for PUA benefits during the weeks including February 16, 2020 through April 11, 2020 (weeks 08-20 through 15-20).

In sum, claimant is not eligible for PUA benefits for weeks 08-20 through 15-20, and is eligible for PUA benefits for weeks 16-20 through 06-21 and weeks 15-21 through 18-21.

DECISION: Order No. 21-UI-172268 is modified, as outlined above.

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

DATE of Service: September 29, 2021

¹ Transcript at 58.

² Pursuant to federal guidance, documentation sufficient to substantiate self-employment includes, but is not limited to, "state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment." UIPL 16-20, Change 4 at 18.

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.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

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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