

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0703

Affirmed
Late Request for Hearing Allowed
Ineligible for Pandemic Unemployment Assistance
(Weeks 12-20 through 17-20, 19-20, 22-20 through 27-20, 29-20 through 52-20, 01-21, and 03-21 through 17-21)

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 March 15, 2020. On March 1, 2021, the February 9, 2021 administrative decision became final without claimant having filed a request for hearing. On March 16, 2021, claimant filed a late request for hearing on the February 9, 2021 administrative decision. ALJ Kangas considered claimant's request, and on April 14, 2021 issued Order No. 21-UI-164756, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 28, 2021. On April 28, 2021, claimant filed a timely response to the appellant questionnaire.

On July 7, 2021, the Office of Administrative Hearings (OAH) mailed a letter to claimant notifying her that Order No. 21-UI-164756 was vacated and that a hearing would be scheduled to address whether claimant had good cause to file the late request for hearing on the February 9, 2021 administrative decision and, if so, the merits of that decision. On August 12, 2021, ALJ Murdock conducted a hearing, and on August 17, 2021 issued Order No. 21-UI-172677, allowing claimant's late request for hearing on the February 9, 2021 administrative decision and affirming the decision. On August 24, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted a written argument that was hand-written on her application for review on August 24, 2021. EAB considered this argument when reaching this decision. Claimant also submitted a written argument with attached documents by email on September 27, 2021. This 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 submitted on September 27, 2021 to the extent it was based on 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 allowing claimant's late request for hearing is **adopted**. The remainder of this decision addresses claimant's PUA eligibility.

FINDINGS OF FACT: (1) In August 2019, claimant worked as a bartender at a hotel. After working at the hotel for a short period, claimant was injured in a car accident. Following the accident, the hotel laid claimant off work to recover from her injuries. Claimant did not take a medical leave of absence or any other type of leave following the accident because she had not worked at the hotel for very long. At the time claimant was laid off, her supervisor informed her that the hotel would re-hire her after she recovered but did not give claimant a definite date to return to work.

(2) In January 2020, claimant began sending emails to her former supervisor requesting that the hotel re-hire her. The hotel did not respond to claimant's emails because it was unaware of them because claimant's former supervisor no longer worked at the hotel.

(3) In March 2020, on or about the start of the COVID-19 pandemic, claimant contacted the new supervisor of the hotel who informed claimant that the hotel would not re-hire her. Claimant looked for bartending work elsewhere but could not find any because restaurants and bars were not hiring due to the COVID-19 pandemic.

(4) Shortly thereafter, claimant filed an initial claim for regular unemployment insurance. The Department determined that claimant was not eligible for regular unemployment insurance, extended benefits, or pandemic emergency unemployment compensation (PEUC).

(5) On June 4, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed PUA benefits for the weeks from March 15, 2020 through April 25, 2020 (weeks 12-20 through 17-20), May 3, 2020 through May 9, 2020 (week 19-20), May 24, 2020 through July 4, 2020 (week 22-20 through 27-20), July 12, 2020 through December 26, 2020 (weeks 29-20 through 52-20), January 3, 2021 through January 9, 2021 (week 01-21), and January 17, 2021 through May 1, 2021 (week 03-21 through 17-21). 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 March 15, 2020 through April 25, 2020 (weeks 12-20 through 17-20), May 3, 2020 through May 9, 2020 (week 19-20), May 24, 2020 through July 4, 2020 (week 22-20 through 27-20), July 12, 2020 through December 26, 2020 (weeks 29-20 through 52-20), January 3, 2021 through January 9, 2021 (week 01-21), and January 17, 2021 through May 1, 2021 (week 03-21 through 17-21).

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 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.” § 2102(a)(3)(A)(ii)(I)(gg). 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 . . . 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. Although claimant met the first element of PUA eligibility because she was not eligible for regular unemployment insurance, extended benefits, or PEUC during the weeks at issue, she nevertheless did not constitute a “covered individual” because her circumstances did not satisfy any of the COVID-19 related reasons enumerated under section 2102 of the CARES Act and federal guidance.

For example, the record does not support eligibility for PUA under sub clause (a)(3)(A)(ii)(I)(gg), that is, on a theory that claimant was scheduled to commence employment and did not have a job or was unable to reach her job as a direct result of the COVID-19 pandemic. Claimant failed to satisfy this provision because claimant was not scheduled to commence employment. Although claimant’s former supervisor expressed an intent to re-hire claimant after she recovered, no firm date was ever scheduled for claimant to commence employment following her recovery. Because claimant had no definite date scheduled to return to work, she was not “scheduled to commence employment” for purposes of Section 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act.

Likewise, the record does not support eligibility for PUA on a theory that, during the weeks at issue, claimant was an employee and was laid off as a direct result of the COVID-19 public health emergency. This provision is not applicable because, although claimant was laid off by the hotel, her lay off happened in August of 2019, before the onset of the COVID-19 pandemic, and occurred because claimant needed time off to recover from her car accident injuries. Thus, claimant’s lay off was not a direct result of the COVID-19 public health emergency.

Finally, the record does not support eligibility for PUA due to the fact that claimant could not find any work because restaurants and bars were not hiring because of the COVID-19 pandemic. Under federal guidance, “[a]n individual is only eligible for PUA if the individual is otherwise able to work and available to 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.*” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) at I-6 (emphasis added).

For these reasons, claimant did not constitute a “covered individual” for purposes of Section 2102(a)(3) of the CARES Act and was not eligible to receive PUA benefits for weeks 12-20 through 17-20, 19-20, 22-20 through 27-20, 29-20 through 52-20, 01-21, and 03-21 through 17-21.

DECISION: Order No. 21-UI-172677 is affirmed.

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

DATE of Service: September 28, 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.

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