

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0795

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On August 27, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective February 2, 2020. Claimant filed a timely request for hearing. On September 27, 2021, ALJ Scott conducted a hearing, and on September 28, 2021 issued Order No. 21-UI-175766, affirming the August 27, 2021 administrative decision by concluding that claimant was ineligible for PUA benefits for the weeks including March 22, 2020 through February 6, 2021, February 14, 2021 through March 27, 2021, April 4, 2021 through May 15, 2021, and June 6, 2021 through August 21, 2021 (weeks 13-20 through 05-21, 07-21 through 12-21, 14-21 through 19-21, and 23-21 through 33-21). On October 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Prior to the COVID-19 pandemic, claimant worked delivering hot food through Postmates and groceries through Instacart.

(2) Because of the pandemic and claimant's resulting concerns about safety practices at the restaurants and grocery stores he visited for work, claimant determined that the work posed too high of a risk for contracting COVID-19, and stopped performing it. Claimant's age and health did not put him at heightened risk of complications from contracting COVID-19.

(3) Claimant filed an initial claim for PUA benefits on October 1, 2020, and subsequently claimed benefits for the weeks including March 22, 2020 through February 6, 2021, February 14, 2021 through March 27, 2021, April 4, 2021 through May 15, 2021, and June 6, 2021 through August 21, 2021 (weeks 13-20 through 05-21, 07-21 through 12-21, 14-21 through 19-21, and 23-21 through 33-21). These are the weeks at issue. The Department did not pay benefits to claimant for any of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits for the weeks at issue.

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 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.” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(ff).

The record shows that claimant was unemployed because he discontinued his work for Instacart and Postmates due to concerns that he would be exposed to COVID-19 at the restaurants and grocery stores he visited for work. At hearing, claimant testified that he did not have any underlying health conditions which would put him at heightened risk for complications were he to contract COVID-19, and that he was not in an age group considered high-risk. Transcript at 15–16. Claimant did not offer evidence to show that he was advised to quarantine by a health care provider.¹ Therefore, claimant did not meet his burden² to show that he qualified as a “covered individual” under § 2102(a)(3)(A)(ii)(I)(ff) of the CARES Act. Because claimant also did not show that he was unemployed, partially unemployed, or unable or unavailable to work due to any of the other circumstances contemplated under § 2102(a)(3)(A)(ii)(I) of the CARES Act, claimant did not qualify as a “covered individual” for purposes of the PUA program.

For the above reasons, claimant was not eligible for PUA benefits for the weeks at issue.

DECISION: Order No. 21-UI-175766 is affirmed.

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

DATE of Service: November 8, 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,

¹ *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) at 13 (Without having been advised by a health care provider to self-quarantine, an individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-related criteria for PUA, is not eligible for PUA).

² *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).

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 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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