

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0864

Affirmed
Late Request for Hearing Allowed
Ineligible for PEUC Benefits

PROCEDURAL HISTORY: On December 2, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant is not eligible for Pandemic Emergency Unemployment Compensation (PEUC) Benefits. On December 22, 2020, the December 2, 2020 administrative decision became final without claimant having filed a request for hearing. On February 15, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 16, 2021 issued Order No. 21-UI-162791, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 30, 2021. On March 22, 2021, claimant filed a timely response to the appellant questionnaire, and on May 19, 2021 the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-162791 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing would be allowed and, if so, the merits of the December 2, 2020 administrative decision. On September 16, 2021, ALJ Janzen conducted a hearing, and on October 5, 2021 issued Amended Order No. 21-UI-176406, affirming the December 2, 2020 administrative decision.¹ On October 25, 2021, claimant filed an application for review of Amended Order No. 21-UI-176406 with the Employment Appeals Board (EAB).

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

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 relates to the portion of the order under review that concluded that claimant is not eligible for PEUC benefits in Oregon.

¹ Amended Order No. 21-UI-176406 corrected Order No. 21-UI-174996, issued on September 17, 2021, so that it reflected the ALJ's finding that claimant filed his late request for hearing on January 5, 2021 instead of February 15, 2021. Amended Order 21-UI-176406 at 5. The amended order also added the word "not" in the "ORDER" portion of the order to indicate that claimant was not entitled to PEUC. Amended Order 21-UI-176406 at 5. The two orders are otherwise substantially the same.

FINDINGS OF FACT: (1) On January 27, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits in Oregon. The Department paid claimant regular UI benefits through the week ending October 31, 2020 (week 44-20), when he exhausted his regular UI benefits.

(2) On December 1, 2020, claimant contacted the Department to inquire whether he was eligible to apply for PEUC benefits in Oregon based on the exhaustion of his Oregon regular UI benefits.

(3) On December 2, 2020, in response to claimant's inquiry, the Department issued the December 2, 2020 administrative decision, which explained that the Department could not file a PEUC claim for claimant at that time because he may qualify for regular unemployment insurance benefits in Alaska, which would make him ineligible for PEUC benefits in Oregon.

(4) On December 14, 2020, claimant called the Department and was advised by a Department representative that because he was eligible for a regular UI benefits claim in Alaska based on an alternate base year, he was not eligible for PEUC in Oregon and he should file a regular UI claim in Alaska.

(5) On or about January 3, 2021, claimant filed a claim for regular UI benefits in Alaska. The State of Alaska provided claimant the option to backdate his regular UI benefits. Claimant decided not to backdate his Alaska regular UI claim because backdating his Alaska regular UI claim would have caused him to receive a lower weekly benefit amount for the backdated weeks. The State of Alaska paid claimant 18 weeks of regular UI benefits at which point his benefits exhausted and the State of Alaska then provided claimant extended benefits.

CONCLUSIONS AND REASONS: Claimant is not eligible for PEUC benefits in Oregon.

Title II, Subtitle A, Section 2107 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Public Law (Pub. L.) 116-136 provides, in relevant part:

SEC. 2107. PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION

(a) FEDERAL-STATE AGREEMENTS. -

* * *

(2) PROVISIONS OF AGREEMENT.- Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019); [and]

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law[.]

Eligibility for PEUC benefits under the CARES Act is available to individuals who have exhausted their eligibility for regular UI compensation in Oregon and do not have eligibility for regular UI compensation in any other state. The record shows that after claimant exhausted his Oregon regular UI benefits at the end of week 44-20, he was eligible for regular UI benefits in the State of Alaska based on an alternate base year claim. In fact, claimant ultimately filed a claim for regular UI benefits in Alaska in January 2021, received regular UI benefits from Alaska, and opted against backdating the Alaska regular UI claim. Therefore, because claimant was eligible for (and received) regular UI benefits in Alaska after the exhaustion of his Oregon regular UI benefits, he was not eligible for PEUC benefits in Oregon pursuant to the CARES Act.

DECISION: Amended Order No. 21-UI-176406 is affirmed.

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

DATE of Service: December 1, 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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