

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0910

Reversed & Remanded

PROCEDURAL HISTORY: On May 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks including September 27, 2020 through January 9, 2021 (weeks 40-20 through 01-21); January 17, 2021 through February 27, 2021 (weeks 03-21 through 08-21); March 7, 2021 through March 13, 2021 (week 10-21); and March 21, 2021 through March 27, 2021 (week 12-21) (decision # 141655). Claimant filed a timely request for hearing. On October 21, 2021, ALJ Scott conducted a hearing which was continued on October 25, 2021, and on October 26, 2021 issued Order No. 21-UI-178040, modifying decision # 141655 by concluding that claimant was not eligible for PEUC benefits for the weeks including September 27, 2020 through March 20, 2021 (weeks 40-20 through 11-21).¹ On November 2, 2021, claimant filed an application for review with the Employment Appeals Board (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 documentation attached to claimant's 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 will remain in the record.

¹ The order under review stated that it affirmed decision # 141655. Order No. 21-UI-178040 at 3. However, the order under review modified decision # 141655 by concluding that claimant was ineligible for PEUC benefits for additional weeks. Order No. 21-UI-178949 at 3.

FINDINGS OF FACT: (1) On March 19, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits in Oregon.

(2) On April 10, 2020, the Department mailed a letter to claimant explaining that although they had processed an Oregon claim for regular UI benefits using only her Oregon wages, she had several available claim filing options because she had “worked in more than one state within the last two years.” EAB Exhibit 1 at 1. The letter identified the two states where claimant had worked as Oregon and Washington and indicated, among other things, that if she chose to pursue her regular UI claim in Oregon, she could elect to use only her Oregon wages to support her regular UI claim, or she could elect to file a combined wage claim (CWC) which incorporated her Oregon wages with her Washington State wages. The letter provided claimant until April 15, 2020 to contact the Department to make an election.

(3) Based upon her Oregon claim for benefits, the Department paid claimant regular UI benefits through the week ending September 26, 2020 (week 39-20), when she exhausted her balance of regular UI benefits, and PEUC benefits thereafter for the weeks including September 27, 2020 through March 27, 2021 (weeks 40-20 through 12-21), the weeks at issue.

(4) On or about April 5, 2021, claimant filed a claim for regular UI benefits with the State of Washington Employment Security Department (“Washington”).

(5) On April 8, 2021, Washington mailed correspondence to claimant that stated she was “potentially” eligible for regular UI benefits. Exhibit 1 at 3. However, the correspondence also stated that based on claimant’s available Washington State wages both her weekly benefit amount and maximum benefit amount for her benefit year were “\$0.” Exhibit 1 at 3. The correspondence further explained that Washington had requested wage information from the State of Oregon that would support a combined wage claim (CWC) and that once this information was received Washington would send claimant an updated statement of benefits.

(6) On May 5, 2021, the Department issued decision # 141655 concluding that claimant was ineligible for the PEUC benefits she had already received because she “may” qualify for regular UI benefits in Washington beginning week 40-20. Transcript at 17.

(7) Between May 5, 2021 and October 22, 2021, the Department transferred Oregon wage information to Washington to support claimant’s Washington CWC.

(8) On October 22, 2021, Washington mailed a “Redetermination of Unemployment Claim” letter that replaced their prior unemployment claim determination letter from “Apr 29 2021” and informed claimant of her “potential” eligibility for benefits in Washington State with a \$300 weekly benefit amount and a \$5199 maximum benefit amount. Exhibit 2. The letter also stated that it was not “an approval or denial of benefits” but only told claimant “how much [she] could potentially get and for how long” and that Washington would “send [her] other [correspondence] . . . to let [her] know when [they] approve or deny [her] claim.” Exhibit 2.

CONCLUSIONS AND REASONS: Order No. 21-178040 is set aside and the matter is remanded for further development of the record.

Where the Department has paid benefits it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

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[.]

The order under review found that claimant was not entitled to PEUC benefits in Oregon because she *was* eligible for a new claim for regular UI benefits in the State of Washington, and therefore had not exhausted all rights to regular compensation as required by Federal law. Order No. 21-UI-178040 at 2. The record as developed does not support this conclusion.

Further development of the record is needed to determine whether claimant had a right to regular UI benefits in the State of Washington, such that she was ineligible for PEUC benefits in Oregon. The record shows that on April 10, 2020, the Department mailed correspondence to claimant advising her that, among other options, she could file a regular UI claim in Oregon based only on her Oregon wages, or she could file a CWC based on her Oregon and Washington wages, and that she had five days to respond. However, further inquiry is needed to determine whether claimant made an affirmative choice regarding her filing options within those five days and whether that choice was communicated to, and received by, the Department. If claimant did communicate a filing choice, and that communication was received by the Department, further inquiry is needed to determine the substance of that communication, including whether claimant chose a regular UI claim based only on Oregon Wages, or a CWC, and whether the Department proceeded with the option that claimant affirmatively chose. If claimant did not communicate a choice to the Department, or claimant communicated a choice, but the Department did not receive the communication, further inquiry is needed to address whether the Department proceeded in the absence of any communication with a regular UI claim for benefits based only on Oregon wages, or whether it proceeded with a CWC.

If the Department proceeded with a CWC (either because claimant affirmatively requested a CWC, or otherwise), further inquiry is needed to show the specific Washington State wages that were used to support the CWC, and how those specific Washington State wages were determined by the Department. Furthermore, because the Department's position at hearing was that claimant was eligible for a CWC in Washington beginning week 40-20, the record should be further developed to address whether any portion (or all) of the Washington wages used to support claimant's Washington CWC eligibility were also used to support claimant's Oregon March 2020 CWC claim (assuming a CWC claim was pursued) Transcript at 10. If the evidence shows that the same Washington wages were indeed used, or that claimant was not otherwise eligible for a CWC in Washington beginning week 40-20, the record should be further developed to address the Department's position on claimant's PEUC eligibility for the weeks at issue.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had a right to regular UI benefits in the State of Washington, such that she was ineligible for PEUC benefits in Oregon, Order No. 21-UI-178040 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-178040 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 10, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-178040 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 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

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 الإستئناف 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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.