

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0922

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On September 13, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective December 6, 2020. Claimant filed a timely request for hearing. On October 11, 2021, ALJ Wyatt conducted a hearing, and on October 13, 2021 issued Order No. 21-UI-177103, affirming the September 13, 2021 administrative decision by concluding that claimant was not eligible for PUA benefits for the weeks including June 28, 2020 through July 11, 2020 (weeks 27-20 through 28-20), August 16, 2020 through September 19, 2020 (weeks 34-20 through 38-20), and November 8, 2020 through December 5, 2020 (weeks 46-20 through 49-20). On November 2, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained new information that was not part of the hearing record, but the new information is not material to EAB's determination in this case. Under ORS 657.275(2) and OAR 471-041-0090(1)(b)(A) (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) At the time the COVID-19 pandemic began, claimant was employed by two assisted living communities while he attended nursing school.

(2) Sometime after the pandemic began, claimant's employers learned that he was attending nursing school. Both employers became concerned that by attending school, claimant would cross-contaminate the employers' facilities and expose the residents who lived there to COVID-19. Both employers told claimant that he would have to stop attending school in order to continue working at their respective facilities. Claimant decided to continue attending school, and ultimately separated from both employers during the summer of 2020.

(3) On July 14, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits, which the Department determined was monetarily valid. Claimant claimed benefits for the

weeks including June 28, 2020 through July 11, 2020 (weeks 27-20 through 28-20), August 16, 2020 through September 19, 2020 (weeks 34-20 through 38-20), and November 8, 2020 through December 5, 2020 (weeks 46-20 through 49-20). These are the weeks at issue. On August 23, 2021, claimant filed an initial claim for PUA benefits. The Department subsequently issued several administrative decisions concluding, variously, that claimant was disqualified from or otherwise ineligible for regular UI benefits for all of the weeks at issue. The Department did not pay claimant either regular UI or PUA benefits for any of the weeks at issue.¹

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

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. 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 the following reasons:

- (aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (bb) a member of the individual's household has been diagnosed with COVID-19;
- (cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(ff) 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;

(gg) 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;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

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

In order for claimant to be considered a “covered individual” under the PUA program, claimant must show that he was both ineligible for regular or extended benefits under state law *and* that he was unemployed or unavailable to work due to one of the 11 reasons listed under § 2102(a)(3)(a)(ii)(I) of the Act. The record shows that claimant had a monetarily valid regular UI claim, but was disqualified or otherwise ineligible for regular UI benefits for the weeks at issue. Therefore, for purposes of the PUA program, claimant was not eligible for regular or extended benefits under state or federal law. However, claimant has not shown that he was a “covered individual” under the Act during the weeks at issue because he was not unemployed or unavailable for work due to one of the 11 reasons listed under § 2102(a)(3)(a)(ii)(I) of the Act.

Claimant became unemployed in the summer of 2020 because the employers he had been working for would not permit him to continue working at their facilities while he attended nursing school. The employers were concerned that claimant could be exposed to COVID-19 at school and then pass it to the residents at the employers’ facilities. In his written argument, claimant asserted that his separation from employment was a direct result of the COVID-19 pandemic. Claimant’s Written Argument at 1. The record does not support this conclusion because the record does not indicate that claimant separated from work for any of the reasons listed under Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I).

In particular, claimant did not voluntarily quit his job as a *direct result* of COVID-19. It is not clear from the record whether claimant actually quit either job, though his testimony suggests that he may have quit at least one of the jobs after the employer gave him an “ultimatum” to either stop attending school or leave their employment. Transcript at 16. Assuming that claimant did quit this job by choosing to resolve the ultimatum in favor of attending school, claimant did not quit due to a direct result of COVID-19.

Per US Department of Labor (USDOL) guidance,² “direct result” as used in § 2102 of the CARES Act is defined per 20 C.F.R. 625.5(c) to mean that “the unemployment is an immediate result of the major disaster³ itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from: (1) The physical damage or destruction of the place of employment; (2) The physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or (3) Lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.”

Here, claimant’s decision to resolve the employer’s ultimatum in favor of continuing to attend school was not an *immediate result* of the COVID-19 public health emergency but rather the result of a “longer chain of events precipitated or exacerbated” by the pandemic. Claimant therefore did not meet the eligibility criteria under Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I), and as a result was not eligible for PUA benefits during the weeks at issue.

DECISION: Order No. 21-UI-177103 is affirmed.

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

DATE of Service: December 9, 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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² U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 14.

³ Where appropriate, “COVID-19 public health emergency” should be substituted for “major disaster,” and “pandemic” should be substituted for “disaster.”

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 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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