

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0948

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On May 26, 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 February 2, 2020. Claimant filed a timely request for hearing. On October 25, 2021, ALJ Scott conducted a hearing, and on October 26, 2021 issued Order No. 21-UI-178042, affirming the May 26, 2021 administrative decision. On November 12, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) In 2019, claimant collected discarded cans and bottles and redeemed them for cash based on their deposit value.

(2) Claimant did not register her can and bottle redemption activities as a business entity with the Oregon Secretary of State. Claimant did not file business or personal tax returns or pay business or personal income taxes based on her can and bottle redemption activities in 2019 or thereafter.

(3) On June 18, 2020, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits. The Department determined that claimant's base year was 2019. In her initial claim for PUA benefits, claimant asserted that her can and bottle redemption activities constituted self-employment, but that "she was unable to reach her place of employment because of a quarantine imposed as a direct result of [the] COVID-19 public health emergency." Transcript at 11.

(4) Claimant claimed and was paid PUA benefits for each of the weeks including February 2, 2020 through December 12, 2020, and December 27, 2020 through May 8, 2021 (weeks 06-20 through 50-20, and 53-20 through 18-21). Claimant claimed and was not paid PUA benefits for each of the weeks including December 20, 2020 through December 26, 2020, and May 9, 2021 through September 4, 2021 (weeks 52-20, and 19-21 through 35-21). All these weeks are the weeks at issue.

(5) Claimant had chronic obstructive pulmonary disease and a kidney removed due to cancer. Claimant understood that these conditions placed her at greater risk for complications if she contracted COVID-19. Claimant believed that she was impacted by the COVID-19 pandemic because she was afraid to continue her can and bottle redemption activities after she learned about the health risks associated with COVID-19.

(6) When claimant applied for benefits from a from a community service consortium, she provided a plan to document how she planned to support herself through her can and bottle redemption activities. When claimant applied for Social Security benefits, that agency considered the \$40 in income she described that she received from her can and bottle redemptions during each of several months of 2019 as “net income from self-employment (NISE).” Exhibit 1 at 8-9.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits for the weeks including February 2, 2020 through December 12, 2020, and December 20, 2020 through September 4, 2021 (weeks 06-20 through 50-20, and 52-20 through 35-21).

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. 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).

An individual may also meet the definition of a “covered individual” if they self-certify that they are self-employed, seeking part-time employment, lack sufficient work history, or otherwise would not qualify for regular unemployment, extended benefits, or pandemic emergency unemployment compensation, so long as they otherwise satisfy the requirements listed under section 2102(a)(3)(A)(ii)(I) of the Act. Pub. L. 116-136, § 2102(a)(3)(A)(ii)(II). Section 2102(h) of the Act provides that regulations at 20 C.F.R. Part 625 apply to the PUA program, unless otherwise stated or contrary to the Act. 20 C.F.R. 625.2(o) defines “self-employment” as “services performed as a self-employed individual.” 20 C.F.R. 625.2(n) defines “self-employed individual” as “an individual whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm.”

Claimant asserted in her initial claim for PUA benefits that she was self-employed. Because the record fails to show that claimant qualified for regular unemployment, extended benefits, or pandemic

emergency unemployment compensation, claimant's eligibility for PUA benefits therefore turns on whether she was a "covered individual" under section 2102(a)(3)(A)(ii)(II) of the Act.

Claimant's can redemption activities did not constitute self-employment because the record does not show that those activities were "services performed as a self-employed individual" as is required to meet the definition of "self-employment" set forth by 20 C.F.R. 625.2(o). A "self-employed individual," as that term is defined by 20 C.F.R. 625.2(n), is someone whose primary reliance for income is on the services the individual performs in their "own business or . . . farm." Here, the record does not show that redeeming cans and bottles was an activity claimant engaged in as part of her own business or farm. Claimant's redemption of cans and bottles had nothing to do with any farm, and the record shows that her activities lacked the characteristics of a business. There is no evidence, for example, that claimant had formed and registered a business entity with the Oregon Secretary of State to carry out her can and bottle redemption activities. There is also no indication that claimant had ever paid taxes that are typically assessed against businesses, or that she had ever filed a tax return in which she represented to the taxing authority that her redemption of cans and bottles was a business. The record shows that claimant may have provided a business plan of some sort to a community service consortium when applying for benefits and that the Social Security Administration designated the minimal income she reported from her redemption activities as self-employment income. Regardless, viewing the record as a whole, the preponderance of evidence supports the conclusion that claimant did not redeem cans and bottles as part of her "own business" or as someone whose primary reliance for income is on the services performed. As a result, claimant was not a self-employed individual as defined by 20 C.F.R. 625.2(n).

Even if claimant met the definition of a self-employed individual, the record fails to show that claimant was unemployed or unable or unavailable to work during the weeks at issue because of any qualifying COVID-related reason described at § 2102(a)(3)(A)(ii)(I)(aa)-(kk) of the Act. Therefore, claimant is not a "covered individual" as required for PUA eligibility. Claimant certified to the Department when she filed her initial claim that "she was unable to reach her place of employment because of a quarantine imposed as a direct result of [the] COVID-19 public health emergency," which is a reason listed at §2102(a)(3)(A)(ii)(I)(ee) of the Act. However, a U.S. Department of Labor clarification provides an example of the meaning of that phrase; the example does not support claimant's certification. *See* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) at I-6 ("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. For example: An individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19."). The record fails to show that claimant had a place of employment or, that claimant could not reach the places from which she ordinarily collected cans and bottles because doing so would require violating a state or municipal order restricting travel.

Claimant believed that her chronic obstructive pulmonary disease and a kidney removal placed her at greater risk for complications if she contracted COVID-19 and was afraid to continue her can and bottle redemption activities after she learned about the health risks associated with COVID-19. However, the record fails to show that claimant was advised by a physician to discontinue such activities for health reasons and was placed under a quarantine. Likewise, the record fails to show that continuing her can and bottle redemptions placed her at a higher risk for contracting COVID-19 or that claimant's discontinuation of the can and bottle redemption activities was based on any factors other than her own

decision. (*see* §2102(a)(3)(A)(ii)(I)(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).

For all of these reasons, claimant was not a “covered individual” within the meaning of the CARES Act, and therefore was not eligible to receive PUA benefits during the weeks at issue, weeks 06-20 through 50-20, and 52-20 through 35-21.

DECISION: Order No. 21-UI-178042 is affirmed.

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

DATE of Service: December 21, 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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