

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1026

Reversed
Not Ineligible for PUA Based on California Claim

PROCEDURAL HISTORY: On September 17, 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 August 9, 2020. Claimant filed a timely request for hearing. On October 26, 2021, ALJ Frank conducted a hearing, which was continued to November 15, 2021. On November 23, 2021, ALJ Frank issued Order No. 21-UI-180407, affirming the September 17, 2021 administrative decision and concluding that claimant was not entitled to receive PUA benefits from March 29, 2020 through July 25, 2020 (weeks 14-20 through 30-20), August 2, 2020 through August 15, 2020 (weeks 32-20 through 33-20) and August 23, 2020 through September 4, 2021 (weeks 35-20 through 35-21). On December 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant was an Oregon resident who never lived in any other State but Oregon. Prior to March 29, 2020, claimant became aware that she had become a victim of identity theft in the State of California

(2) On March 29, 2020, an individual using claimant's identifying information claimed, and was paid, PUA benefits for multiple weeks in California. Thereafter, the Department became aware that a PUA claim had been filed in claimant's name in California and notified claimant of the California claim. Claimant reported the California PUA claim to the California Employment Department as a case of identity theft.

(3) On October 2, 2020, claimant filed an initial claim for PUA benefits in Oregon. As part of her PUA application, claimant was asked, "Were any amounts payable to you from any retirement, pension, or annuity payments for a plan contributor maintained (sic) by an Employer you received a payment of in 2019." November 15, 2021 Transcript at 6. Claimant answered in the negative, then added, "pandemic UI in California. Date 3/21/20 to 9/18/20." November 15, 2021 Transcript at 6. Claimant inputted this latter information based on the information she had previously received from a representative from the Department that an individual in California had filed a California PUA claim in her name. Claimant had never filed a claim for PUA benefits in any state other than Oregon.

(4) Claimant claimed PUA benefits for the weeks from March 29, 2020 through July 25, 2020 (weeks 14-20 through 30-20), August 2, 2020 through August 15, 2020 (weeks 32-20 through 33-20) and August 23, 2020 through September 4, 2021 (weeks 35-20 through 35-21). These are the weeks at issue. The Department paid claimant PUA benefits for “some” of the weeks at issue, but not all. November 15, 2021 Transcript at 5.

(5) On September 17, 2021, the Department determined that claimant was not entitled to PUA benefits because an individual identifying themselves as claimant was being paid on an out-of-state (California) PUA claim. At the time of this determination, neither the Department nor the State of California had fully investigated whether claimant had been the victim of identity theft with respect to the California PUA claim filed under her name.

CONCLUSIONS AND REASONS: Claimant is not ineligible to receive Pandemic Unemployment Assistance benefits for weeks 14-20 through 30-20, 32-20 through 33-20, and 35-20 through 35-21 based on the existence of a California PUA claim in her name.

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)(3). 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)(i)-(ii). Thus, if an individual is eligible for a regular unemployment claim, extension, or extended benefits under state or federal law, the individual is not eligible for PUA. 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. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The order under review concluded that because the CARES Act precludes eligibility for individuals who have not “exhausted all other benefit rights,” it was “more likely than not that claimant’s existing California claim precludes her from PUA entitlement in this case,” and she was therefore not a covered individual under the CARES Act. Order No. 21-UI-180407 at 3. The record does not support this conclusion.

To the extent the Department denied claimant PUA benefits because a PUA claim had been filed in the State of California by an individual using claimant’s identifying information, the record shows, more likely than not, that this California PUA claim was filed by someone who had stolen claimant’s identity. Claimant provided first-hand testimony that she had lived in Oregon for her entire life and that she had never filed a claim for PUA benefits in any State other than Oregon. October 26, 2021 Transcript at 10-11. Claimant also provided first-hand testimony that prior to the October 2, 2020 date of her initial Oregon PUA claim, she was aware that she had been a victim of identity theft in the State of California and that a representative from the Department had notified claimant that a claim for PUA benefits had

been filed in her name in California. November 15, 2021 Transcript at 13. Thereafter, claimant notified the California Employment Department about her identity theft concerns.

Conversely, the Department's witness testified that the Department's records showed that claimant "seemingly acknowledge[d]" that she filed the March 29, 2020 California PUA claim because she made a reference to "pandemic UI in California" on her initial Oregon PUA claim for benefits. November 15, 2021 Transcript at 6, 9. In addition, the Department's witness testified to a November 13, 2020 notation in the Department's records stating, "Claimant spent time in California taking care of family. Returned in September." November 15, 2021 Transcript at 21. However, claimant's first-hand testimony that she did not file the California PUA claim is entitled to greater weight than the Department's hearsay records.

This conclusion is buttressed by additional record evidence. First, the record offers a reasonable explanation for the "pandemic UI in California" reference made by claimant on her initial Oregon PUA claim in that claimant only inputted this information after she learned of it from the Department. Second, claimant disputed the validity of the November 13, 2021 record entry. November 15, 2021 Transcript at 22-23. Finally, the record shows that at the time of the Department's September 17, 2021 administrative decision, the Department had not fully investigated claimant's contention that the March 29, 2020 California PUA claim was the result of identity theft before denying claimant PUA benefits in Oregon based on the existence of the California PUA claim. Thus, to the extent the Department based their decision to deny claimant PUA benefits on the existence of the California PUA claim, the preponderance of the evidence shows that the California PUA claim was not filed by claimant but rather someone who had stolen claimant's identity and therefore claimant is not ineligible for PUA benefits based on this rationale.

For these reasons, claimant is not ineligible for PUA benefits for the weeks at issue based on the existence of the California PUA claim.

DECISION: Order No. 21-UI-180407 is set aside, as outlined above.

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

DATE of Service: January 10, 2022

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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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 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 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.

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