

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1043

Reversed and Remanded

PROCEDURAL HISTORY: On May 21, 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 starting December 27, 2020 because he failed to provide acceptable proof of employment or self-employment within the required period. Claimant filed a timely request for hearing. On November 12, 2021, ALJ Scott conducted a hearing, and on November 18, 2021 issued Order No. 21-UI-180064, modifying the May 21, 2021 administrative decision by concluding that claimant was not eligible to receive PUA benefits from April 5, 2020 through June 26, 2021 (weeks 15-20 through 25-21).¹ On November 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) For three weeks in March 2020, claimant, who was a full-time high school student, performed services for an entity called I-9 Sports, coaching youth sports and refereeing games.

¹ The order under review characterized its disposition as affirming the May 21, 2021 administrative decision. Order No. 21-UI-180064 at 5. In fact, it modified the administrative decision because the effect of the order was to change the result of the administrative decision by concluding that claimant was ineligible for PUA benefits for the weeks preceding December 27, 2020.

On March 23, 2020, following the onset of the COVID-19 pandemic, youth sports were halted and claimant ceased performing services for I-9 Sports.

(2) On September 27, 2020, claimant filed an application for PUA benefits with the Department. In the application, claimant stated both that he was employed by I-9 Sports and that he was self-employed as a supervisor on behalf of I-9 Sports. Claimant did not attach any documents to the application that might serve as proof of employment or of self-employment.

(3) Claimant claimed PUA benefits for the weeks including April 5, 2020 through October 3, 2020 (weeks 15-20 through 40-20) and for the weeks including October 11, 2020 through June 26, 2021 (weeks 42-20 through 25-21). These are the weeks at issue. The Department paid claimant benefits for weeks 15-20 through 40-20, weeks 42-20 through 01-21, and weeks 03-21 through 15-21. The Department did not pay claimant benefits for week 02-21 and weeks 16-21 through 25-21.

(4) In July and November 2021, representatives for the Department attempted to reach claimant by email to obtain proof of employment or self-employment. The Department received no response to these emails.

CONCLUSIONS AND REASONS: Order No. 21-UI-180064 is reversed as to its conclusion that claimant was not eligible for PUA benefits for weeks 15-20 through 40-20 and 42-20 through 52-20. Order No. 21-UI-180064 is set aside, and this matter remanded for further proceedings as to whether claimant was eligible for PUA benefits for weeks 53-20 through 25-21.

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. § 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. § 2102(a)(3)(A).

In addition, section 2102(a)(3)(A)(iii) of the CARES Act, as amended by Section 241(a) of the Continued Assistance Act (“CAA”), requires individuals to submit documentation to substantiate their employment or self-employment within a specified period of time in order to meet the definition of a “covered individual.” As explained by federal guidance, the provision requires that “individuals who have an existing PUA claim as of December 27, 2020” and “who receive PUA on or after December 27, 2020, must provide documentation within 90 days of the application date or the date the individual is instructed to provide such documentation by the state agency (whichever date is later).” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) (UIPL 16-20, Change 4), at I-10. If an individual fails to submit such documentation, under Section 241(b)(2) of the CAA, the individual is not considered ineligible for PUA benefits received before December 27, 2020 but “the state may . . . establish an overpayment for those weeks of unemployment ending on or after December 27, 2020[.]” UIPL 16-20, Change 4 at I-11. Further, “States must notify . . . individuals filing PUA continued claims on or after December 27, 2020 . . . of the requirement to provide documentation

to substantiate their employment or self-employment. Such notice must include the applicable deadline and the ability to show good cause on or before the deadline for extending such deadline, and the disqualification for failure to provide required documentation, including the potential for an overpayment of benefits paid.” UIPL 16-20, Change 4 at I-12.

The order under review concluded that claimant was not entitled to PUA benefits for all of the weeks at issue, including for the weeks that claimant claimed before December 27, 2020, because claimant did not provide documentation substantiating his employment or self-employment. Order No. 21-UI-180064 at 4-5. The record does not support this conclusion.

The record shows that claimant filed his PUA application on September 27, 2020 and therefore had an existing PUA claim as of December 27, 2020. The record also shows that claimant received PUA benefits after December 27, 2020 because claimant claimed PUA benefits for the weeks including December 27, 2020 through June 26, 2021 (weeks 53-20 through 25-21) and was paid for weeks 53-20 through 01-21 and weeks 03-21 through 15-21. Thus, the substantiation requirement established by section 2102(a)(3)(A)(iii) of the CARES Act (as amended by Section 241(a) of the CAA) applies to claimant. As such, he was required to provide documentation substantiating his employment or self-employment within 90 days of his PUA application date or the date he was instructed to provide such documentation by the Department, whichever date is later.

However, as mentioned above, regardless of whether claimant met the substantiation requirement, under Section 241(b)(2) of the CAA, claimant is not considered ineligible for PUA benefits for the weeks at issue that precede December 27, 2020. *See* CAA § 241(b)(2) (“An individual who received [PUA] . . . for any week ending before the date of enactment of this Act shall not be considered ineligible for such assistance for such week solely by reason of failure to submit documentation described in clause (iii) of subsection (a)(3)(A)[.]”). Therefore, the record does not support Order No. 21-UI-180064’s conclusion that claimant was ineligible for PUA benefits for weeks 15-20 through 40-20 and 42-20 through 52-20.

As for whether or not claimant was ineligible for PUA benefits for weeks 53-20 through 25-21 for failure to substantiate his employment, the record raises doubts that claimant can meet the substantiation requirement given that the only documentation he produced at hearing was a 2020 tax return that showed income from unemployment compensation (presumably reflecting the PUA benefits he received). Transcript at 17. Further, at hearing, claimant testified that he had no income in 2019 and was unlikely to be able to produce a paystub showing that he received wages from I-9 Sports prior to the first week he claimed PUA benefits. Transcript at 18, 20.

Nevertheless, remand is necessary to develop the record in order to assess whether or not claimant met the substantiation requirement and therefore whether or not he is ineligible for PUA benefits for weeks 53-20 through 25-21. This is because it is not evident from the record when the deadline was or is for claimant to provide the documentation substantiating employment or self-employment. The existing record is insufficient to identify the deadline because it is unknown when, if ever, the Department instructed claimant to provide the documentation, and if it did, whether 90 days from that date would be later than 90 days from the date of claimant’s September 27, 2020 PUA application. On remand, the ALJ should inquire when, if ever, the Department notified claimant of the requirement to provide documentation to substantiate his employment or self-employment and whether it considered the July and November 2021 emails to amount to directing claimant to submit the required documentation. The

ALJ also should ask any other questions necessary to develop the record as to whether or not claimant met the substantiation requirement.

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 was ineligible for PUA benefits for weeks 53-20 through 25-21, Order No. 21-UI-180064 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-180064 is reversed as to its conclusion that claimant was not eligible for PUA benefits for weeks 15-20 through 40-20 and 42-20 through 52-20. Order No. 21-UI-180064 is set aside, and this matter remanded for further proceedings as to whether claimant was eligible for PUA benefits for weeks 53-20 through 25-21.

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

DATE of Service: January 6, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-180064 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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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