

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0034

Reversed & 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 effective December 6, 2020. Claimant filed a timely request for hearing. On December 10, 2021, ALJ Scott conducted a hearing, and on December 15, 2021 issued Order No. 21-UI-181927, modifying the May 21, 2021 administrative decision and concluding that claimant was not entitled to receive PUA benefits from June 27, 2021 through September 4, 2021 (weeks 26-21 through 35-21). On December 29, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's December 29, 2021 and January 13, 2022 written arguments 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 such as the information contained in claimant's written argument 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) In calendar year 2019, claimant lived in Texas and was a self-employed independent contractor who performed work in Texas as a teaching artist.

(2) In 2020, claimant became unemployed due to the COVID-19 pandemic. Claimant filed a claim for PUA benefits with the State of Texas and subsequently received PUA benefits. At the time claimant filed his initial Texas PUA claim, claimant had not performed any work in the State of Oregon.

(3) In January 2021, claimant relocated from Texas to Oregon.

(4) On May 18, 2021, claimant filed a new claim for PUA benefits in Oregon after the State of Texas elected to terminate their participation in the PUA program prior to the PUA program expiration date.

(5) Claimant claimed PUA benefits for the weeks from June 27, 2021 through September 4, 2021 (weeks 26-21 through 35-20), the weeks at issue. The Department did not pay claimant for any of the weeks at issue.

CONCLUSIONS AND REASONS: Order No. 21-UI-181927 is reversed and this matter remanded for further development of the record.

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). Per § 2102(a)(3)(A)(ii)(II) of the CARES Act, an individual may also meet the definition of a “covered individual” if they are self-employed, seeking part-time employment, lack sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under § 2107 of the CARES Act, and otherwise meet the requirements listed under § 2102(a)(3)(A)(ii)(I) of the CARES Act.

Guidance from the U.S. Department of Labor has addressed the circumstance where an individual is eligible for PUA benefits in multiple states and the state where they have chosen to file their PUA claim has elected to terminate their participation in the PUA program prior to the program’s expiration date. U.S. Dep’t of Labor (USDOL), Unemployment Insurance Program Letter (UIPL) No. 16-20, Change 6 (September 3, 2021). The USDOL guidance provides, in pertinent part, that “[a]n individual who worked in more than one state at the initial time of becoming unemployed, partially unemployed, or unable or unavailable to work because of approved COVID-19 related reason(s) *or after filing the original PUA claim* – and whose state in which they originally filed the PUA terminated the program prior to its expiration date – may then file a PUA claim in the other state in which they worked.” USDOL, UIPL No. 16-20, Change 6 at 8. (Emphasis added); *see also* USDOL, UIPL No. 16-20, Change 6 at 10 (“[F]or purposes of individuals filing a second PUA claim under this section, such documentation must demonstrate proof of employment or self-employment (or the planned commencement of such employment or self-employment) in the new state at some point between the start of the applicable taxable year for the original PUA claim and the date of filing of the new claim.” (Emphasis in original)).

The order under review concluded that, pursuant to USDOL, UIPL 16-20, Change 6, because claimant had neither worked in Oregon, nor become unemployed in Oregon due to the COVID-19 pandemic and prior to the filing of his initial Texas PUA claim, he was not eligible to file a claim for PUA benefits with the State of Oregon after the State of Texas opted out of the PUA program. Order No. 21-UI-181927 at 3. According to the order under review, USDOL, UIPL 16-20, Change 6, “specifically states

that claimants may not file a claim for PUA in a state in which they did not work.” Order No. 21-UI-181927 at 3. The record does not support the order’s conclusion.

USDOL, UIPL 16-20, Change 6, states that a claimant who worked in more than one state at the time they initially became unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason has the option to file a claim for PUA benefits in any of those states. Further, where this situation arises, and when the state in which the claimant originally filed for PUA benefits has elected to terminate their participation in the PUA program, USDOL, UIPL 16-20, Change 6 states that the individual may then file a claim for PUA benefits in another state where they performed work. However, the language of USDOL, UIPL 16-20, Change 6 also states that in circumstances where a claimant has performed work [or has planned to commence work] in a second state *after filing* the original PUA claim in the first state, and where that individual became unemployed, partially unemployed, or unavailable for work in the second state due to an approved COVID-19 related reason, the individual may then be eligible for PUA benefits in the second state if the first state discontinued participation in the PUA program.

Here, the record shows that claimant relocated to Oregon in January 2021, and that on May 18, 2021, he filed a new claim for PUA benefits in Oregon after the State of Texas discontinued its participation in the PUA program. However, the record fails to show whether claimant engaged in any employment or self-employment (or whether he planned to commence employment) in Oregon between January 2021 and May 18, 2021, and whether he then became unemployed, partially unemployed or unavailable for that work due to a COVID-19 related reason. Thus, it is unclear from the record whether claimant might be eligible for PUA benefits in Oregon pursuant to his May 18, 2021 new claim for PUA benefits based on work performed in Oregon after January 1, 2021. On remand, further inquiry should therefore address whether claimant engaged in any employment or self-employment (or whether he planned to commence employment) between January 1, 2021 and May 18, 2021, and, if so, whether such employment (or the planned commencement of such employment) made him eligible for PUA benefits 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 claimant’s eligibility for PUA benefits in the State of Oregon, Order No. 21-UI-181927 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-181927 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: February 8, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-181927 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 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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