

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0176

Affirmed
Ineligible for Pandemic Unemployment Assistance

PROCEDURAL HISTORY: On May 20, 2021,¹ 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 March 22, 2020. Claimant filed a late request for hearing. On August 16, 2021, ALJ Frank conducted a hearing, and on August 24, 2021 issued Order No. 21-UI-173261, allowing claimant's request for hearing and affirming the May 20, 2021 administrative decision. On September 17, 2021, claimant filed a late application for review of Order No. 21-UI-173261 with the Employment Appeals Board (EAB). On October 8, 2021, EAB issued EAB Decision 2021-EAB-0748, dismissing claimant's late application for review without prejudice, subject to claimant's right to request reconsideration and provide additional evidence to EAB about the reason(s) for the late filing. On October 26, 2021, claimant filed a timely request for reconsideration of EAB Decision 2021-EAB-0748. On December 2, 2021, EAB issued 2021-EAB-0748-R, allowing claimant's request for reconsideration, concluding that claimant had filed a timely application for review of Order No. 21-UI-173261, allowing claimant's request for hearing on the May 20, 2021 administrative decision, reversing Order No. 21-UI-173261 on the merits, and remanding the matter for further development of the record.

On January 5, 2022, ALJ Frank conducted a hearing, and on January 13, 2022 issued Order No. 22-UI-184008, concluding that claimant was not entitled to receive PUA benefits for the weeks from March 22, 2020 through April 4, 2020 (weeks 13-20 through 14-20) and April 12, 2020 through August 7, 2021 (weeks 16-20 through 31-21). On January 28, 2022, claimant filed a timely application for review of Order No. 22-UI-184008 with EAB.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, did not show that factors or circumstances beyond claimant's reasonable control prevented

¹ The Department subsequently issued two administrative decisions—one on July 16, 2021, and another on August 2, 2021—which replaced or amended the May 20, 2021 administrative decision. All three administrative decisions concluded that claimant was not entitled to receive PUA benefits. For purposes of this decision, references to the May 20, 2021 administrative decision include any amendments made by the two subsequent administrative decisions.

claimant from offering the information during the hearing, and was not relevant and material to EAB's determination. 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. EAB considered claimant's argument to the extent it was based on the record.

EVIDENTIARY MATTER: The order under review stated that "Exhibits 1 through 3, submitted by the Employment Department and claimant, were admitted into evidence without objection." Order No. 22-UI-184008 at 2. The hearing record also contains an Exhibit 4, consisting of 17 pages of correspondence between claimant and the Department from March 2021 through December 2021. Although the order does not so state, the record shows that the ALJ also admitted Exhibit 4 into evidence without objection. January 5, 2022 Audio Record at 6:28 to 7:02.

FINDINGS OF FACT: (1) In or around March 2020, claimant applied for work at a deli in southwest Portland, Oregon. The business told claimant that he could begin working for them if he brought in his driver's license, social security card, and food handler's card. The business did not give claimant a specific date on which he was to begin work.

(2) Sometime later, claimant returned to the deli with his driver's license and social security card and found that the business had closed due to conditions relating to the COVID-19 pandemic. Claimant did not have a food handler's card at that time, never obtained one, and never worked for the deli.

(3) On August 16, 2020, claimant filed an initial claim for PUA benefits. When claimant filed his initial claim, the Department determined that claimant was not eligible for regular unemployment insurance (regular UI) benefits, extended benefits, or Pandemic Emergency Unemployment Compensation (PEUC) benefits.

(4) Claimant claimed PUA benefits for the weeks from March 22, 2020 through April 4, 2020 (weeks 13-20 and 14-20), and April 12, 2020 through August 7, 2021 (weeks 16-20 through 31-21). Those are the weeks at issue. The Department paid claimant benefits for weeks 13-20, 14-20, and weeks 16-20 through 15-21. The Department did not pay claimant benefits for weeks 16-21 through 31-21.

CONCLUSIONS AND REASONS: Claimant is not entitled to receive 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, except the individual is unemployed, partially unemployed, or unable 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). Those reasons include, in relevant part, that "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.” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(gg).

The record shows that claimant intended to start working for a deli in the spring of 2020, but did not do so because the deli had closed due to the COVID-19 pandemic. At issue in this case is whether claimant was “scheduled to commence employment” with the deli, such that he would be considered a “covered individual” under § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act. The evidence in the record is somewhat conflicted on this point, but on balance shows that claimant was not “scheduled to commence employment” with the deli.

Claimant offered conflicting evidence as to whether he was scheduled to begin work with the deli.² In a letter dated April 22, 2021 and mailed to the Department on July 12, 2021, claimant stated that he had “applied to [the deli] in person on Wednesday April 15, 2020” and that the owner of the deli “[g]ave me an application to complete and said if I get a Food Handlers Card and bring her two forms of ID I could start on Monday May 4, 2020[.]” Exhibit 4 at 10. By contrast, claimant also testified at the January 2022 hearing that the deli never gave him a start date because the business had closed before he could get a food handlers card or give them his social security card and driver’s license. January 5, 2022 Audio Record at 17:16 to 18:08. Claimant did not explain, and the record does not otherwise provide an explanation for this conflicting evidence from claimant. Neither statement was made close in time to when the events at issue occurred, and thus neither constitutes a contemporaneous account. Claimant’s testimony at the January 2022 hearing—that he was never given a start date—was given under oath. That testimony therefore is afforded more weight than claimant’s unsworn written statement dated April 22, 2021. As a result, the more persuasive evidence shows that claimant was not given a start date for the work at the deli.

Although the deli *offered* claimant a job, the sum of the evidence in the record does not show that claimant was “*scheduled* to commence employment” under § 2102(a)(3)(A)(ii)(I)(gg) of the CARES Act, such that he would be considered a covered individual under the Act. As discussed above, the business did not give claimant a date on which he was to begin working. Further, the job offer was contingent upon claimant obtaining a food handler’s card—which he did not have at the time the offer was made to him. A contingent offer to begin work at an undefined date in the future, after one has obtained the necessary credentials, does not equate to having been scheduled to commence employment. For that reason, claimant was not unemployed due to being scheduled to commence a job that was withdrawn as a direct result of the COVID-19 public health emergency. Claimant therefore is not eligible for PUA benefits during the weeks at issue.

DECISION: Order No. 22-UI-184008 is affirmed.

S. Alba and D. Hettle;

A. Steger-Bentz, not participating.

² The record also contains discrepancies as to *when* the deli offered claimant a job. At the August 16, 2021 hearing, the Department’s witness testified that claimant had indicated on his initial PUA claim that he had been offered employment on March 23, 2020. August 16, 2021 Audio Record at 30:40. Claimant did not rebut that testimony at the August 2021 hearing, but testified at the January 5, 2022 hearing that the deli had offered him the job on April 15, 2020. January 5, 2022 Audio Record at 12:42. Because the date on which the deli offered claimant a job is not directly material to the outcome in this case, however, it is not necessary to weigh the evidence on that point.

DATE of Service: March 29, 2022

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 desisyong ito.

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

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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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