

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0187-R

Request for Reconsideration Allowed
2022-EAB-0187 Adhered to on Reconsideration
Eligible for PUA Benefits Weeks 51-20 through 10-21

PROCEDURAL HISTORY: On February 22, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective February 2, 2020. Claimant filed a timely request for hearing. On January 7, 2022, ALJ S. Lee conducted a hearing, and on January 13, 2022 issued Order No. 22-UI-183995, reversing the February 22, 2021 administrative decision by concluding that claimant was eligible for PUA benefits for the weeks including December 13, 2020 through March 13, 2021 (weeks 51-20¹ through 10-21). On January 31, 2022, claimant filed an application for review with the Employment Appeals Board (EAB). On February 11, 2022, EAB issued EAB Decision 2022-EAB-0187, dismissing claimant’s application for review of Order No. 22-UI-183995 because it presented no justiciable controversy. On February 28, 2022, claimant filed a request for reconsideration of EAB Decision 2022-EAB-0187.

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. EAB considered claimant’s argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Starting in approximately 2015, claimant was self-employed as a handyman. Claimant had at least two regular clients between about 2015 until early 2020.

(2) Between March 9, 2020 and March 10, 2020, claimant had three scheduled jobs cancelled due to concerns relating to the COVID 19-pandemic. One such job involved work in a senior care center, and

¹ The order under review referred to the first week at issue—the week beginning December 13, 2020—as “week 50-20.” Order No. 22-UI-183995 at 1. However, that week is the 51st week of 2020, not the 50th. The discrepancy is presumed to be scrivener’s error.

was cancelled by the client so as to not put the residents at further risk. Claimant was unable to find other work in his field.

(3) Claimant filed an initial application for PUA benefits on February 19, 2021. Claimant did not have sufficient hours or earnings to qualify for a regular unemployment insurance (regular UI) claim at that time. Claimant subsequently claimed benefits for the weeks including December 13, 2020 through March 13, 2021 (weeks 51-20 through 10-21).

CONCLUSIONS AND REASONS: Claimant was eligible for PUA benefits for weeks 51-20 through 10-21.

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 eleven reasons, including 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). Per § 2102(a)(3)(A)(ii)(II) of the 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.

On December 27, 2020, the Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (“Continued Assistance Act,” herein “CAA”), was signed into law and included certain changes to the PUA program through amendment of the CARES Act, as addressed herein. In relevant part, § 201(f) of the CAA modified the CARES Act such that initial PUA claims filed after December 27, 2020 may be backdated to an effective date of no earlier than December 6, 2020. U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (UIPL 16-20), Change 4, (Jan. 8, 2021) at 26–27.

The order under review correctly concluded that, due to the cancellation of his self-employment work that resulted from the COVID-19 pandemic, claimant was a covered individual under the Act, and therefore eligible for PUA benefits for the weeks at issue. Order No. 22-UI-183995 at 3–4. In his written argument enclosed with the request for reconsideration, claimant asserted that he should also be considered eligible for PUA benefits starting on February 8, 2020 because he had attempted unsuccessfully to file an initial application for PUA benefits starting on or around December 13, 2020 but was unable to contact the Department via phone or email. Claimant’s Written Argument at 1. Claimant further asserted that he did not become re-employed until September 1, 2021, and therefore should be considered eligible for PUA benefits until that date, despite the fact that he only ever claimed

PUA benefits through March 13, 2021. Claimant's Written Argument at 1. Both of claimant's assertions lack merit.

In order for claimant to have been eligible for a backdating of his claim, such that he would have been eligible for benefits effective February 8, 2020, claimant must, under § 201(f) of the CAA, have filed his initial application for benefits on or before December 27, 2020. While claimant indicated in his written argument that he attempted to file an initial application starting on or around December 13, 2020, he did not raise this assertion at hearing, nor did he explain in his written argument that he was unable to do so due to factors or circumstances beyond his reasonable control. Because EAB is therefore unable to consider any such new information under OAR 471-041-0090(1)(b), this decision must turn solely on evidence that was entered into the hearing record. As the hearing record shows that claimant did not file his initial application until February 19, 2021, claimant's PUA claim may not be backdated to earlier than December 6, 2020.

Additionally, EAB's jurisdiction is limited in scope to the issue on appeal. As with the information regarding claimant's earlier attempts to file an initial application, EAB cannot consider claimant's new information regarding his employment status through September 1, 2021. However, even if EAB were permitted to consider that information, EAB would lack jurisdiction to determine whether claimant was eligible for PUA benefits between March 14, 2021 and September 1, 2021 because he only claimed benefits for the weeks including December 13, 2020 through March 13, 2021 (weeks 51-20 through 10-21). As claimant did not claim any weeks of benefits after week 10-21, the Department has not made a determination as to whether he was eligible during any of those weeks, a denial of those weeks has not been considered on appeal by OAH, and EAB may therefore not determine whether any such denial was proper.

For the above reasons, claimant was eligible for PUA benefits for the weeks at issue, but was not eligible to backdate his initial application to February 8, 2020. In addition, EAB lacks jurisdiction to determine claimant's eligibility for any weeks of benefits after week 10-21.

DECISION: Claimant's request for reconsideration is allowed. EAB Decision 2022-EAB-0187 is adhered to on reconsideration.

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

DATE of Service: April 12, 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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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 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 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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