

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0264

Affirmed

Ineligible for Pandemic Unemployment Assistance Weeks 50-20 through 35-21

PROCEDURAL HISTORY: On December 20, 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 December 6, 2020. Claimant filed a timely request for hearing. On February 1, 2022 and February 9, 2022, ALJ Scott conducted a hearing, and on February 17, 2022 issued Order No. 22-UI-186688, affirming the December 20, 2021 administrative decision. On February 24, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Prior to 2013, claimant regularly performed services operating a pilot car, which is a vehicle that accompanies trucks hauling oversized loads. On or about 2013, claimant retired and ceased regularly operating a pilot car.

(2) In 2019 and 2020, claimant carried on some activities operating a pilot car. On three occasions in November and December 2020, claimant performed some house maintenance odd jobs, such as painting trim and cleaning gutters, for an individual.

(3) On August 18, 2021, claimant filed an initial claim for PUA benefits. Claimant claimed PUA benefits for the weeks including December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21). These are the weeks at issue. The Department paid claimant PUA benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive PUA benefits for the weeks including December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21).

Under the CARES Act Pub. L. 116-136, to be entitled to receive PUA benefits, an individual must be a “covered individual” as that term is defined by the Act. Pub. L. 116-136, § 2102(b). The Act defines a “covered individual” as an individual who (1) “is not eligible for regular compensation . . . under State or Federal law . . . including an individual who has exhausted all rights to regular unemployment . . . under State or Federal law” and (2) self-certifies that they are either “otherwise able to work and available to work within the meaning of applicable State law, except the individual is unemployed,

partially unemployed, or unable or unavailable to work because” of one of eleven reasons related to the COVID-19 pandemic, or “is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment” and is rendered unemployed or unavailable to work because of one of the eleven listed reasons. Pub. L. 116-136, § 2102(a)(3)(A).

One of the eleven COVID-19 impact reasons listed in Section 2102(a)(3)(A)(ii)(I) is that “the individual meets any additional criteria established by the Secretary [of Labor] for unemployment assistance under this section.” § 2102(a)(3)(A)(ii)(I)(kk). Pursuant to federal guidance, “the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) at 2. Section 2102(h) of the Act provides that regulations at 20 C.F.R. Part 625 apply to the PUA program, unless otherwise stated or contrary to the Act. 20 C.F.R. Section 625.2(o) defines “self-employment” as “services performed as a self-employed individual.” 20 C.F.R. Section 625.2(n) defines “self-employed individual” as “an individual whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm.” Documentation sufficient to substantiate self-employment includes, but is not limited to, “state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual’s self-employment.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) at I-10.

The documentation claimant submitted at hearing was not sufficient to establish that claimant met the 20 C.F.R. Section 625.2(n) definition of “self-employed individual.” This is because the documents do not reliably show that claimant’s pilot car or house maintenance activities in 2019 and 2020 constituted claimant’s “own business.” Claimant failed to submit tax returns or signed affidavits supporting these activities. Claimant also did not submit any business licenses, an omission that weighs against a finding that claimant had a house-maintenance business, given the Department witness’s un rebutted testimony that operating such a business would require licensure with the Oregon Construction Contractors Board. February 1, 2022 Transcript at 11. Claimant did submit receipts, but they were not sufficient to establish that claimant’s activities constituted a business. Instead, they merely show that claimant was paid for odd jobs, such as painting trim and cleaning gutters, for three dates in November and December 2020. Exhibit 2 at 1-3. Claimant submitted 1099 forms for 2019 and 2020, which appear to relate to pilot car activities. Some of the information shown on the 1099 forms was written-in by hand, which diminishes its reliability to a degree; and, given that claimant retired and ceased operating a pilot car regularly on or about 2013, the 1099 forms do not adequately establish that claimant’s pilot car activities in 2019 and 2020 constituted a business. Exhibit 2 at 4; Exhibit 3.

Thus, the record does not show that claimant was self-employed, and therefore does not establish that he was a self-employed individual who experienced a significant diminution of services because of the COVID-19 public health emergency under Section 2102(a)(3)(A)(ii)(I)(kk) and federal guidance. Because claimant did not meet the criteria under Section 2102(a)(3)(A)(ii)(I)(kk), he was not a “covered individual” within the meaning of the CARES Act, and therefore was not eligible to receive PUA benefits during the weeks at issue, weeks 50-20 through 35-21.

DECISION: Order No. 22-UI-186688 is affirmed.

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

DATE of Service: April 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 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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