

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0284

Modified
Ineligible for PUA Weeks 13-20 through 36-20, 38-20, and 53-20

PROCEDURAL HISTORY: On February 18, 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 March 22, 2020. Claimant filed a timely request for hearing. On February 17, 2022, ALJ Scott conducted a hearing and issued Order No. 22-UI-186692 affirming the February 18, 2022 administrative decision. On March 1, 2022, 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 her 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) In December 2018, claimant completed her last work assignment with her former employer, a temporary employment agency.

(2) On June 29, 2020, claimant filed an initial claim for PUA benefits.

(3) Claimant claimed PUA benefits for the weeks from March 22, 2020 through September 5, 2020 (weeks 13-20 through 36-20), September 13, 2020 through September 19, 2020 (week 38-20), and December 27, 2020 through January 2, 2021 (week 53-20). These are the weeks at issue.¹ The Department paid claimant for the weeks from March 22, 2020 through August 29, 2020 (weeks 13-20

¹ At hearing, the Department's representative initially identified weeks 13-20 through 53-20 as the weeks at issue, but later testified that "weeks 39 through 52 were not in the record" and that he "[did not] see any certs that came through" for weeks 39-20 through 52-20. Transcript at 4-6. In light of the unclear nature of this testimony, EAB has taken notice of the weeks at issue as stated herein from information provided in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed facts will remain in the record.

through 35-20), and September 13, 2020 through September 19, 2020 (week 38-20). The Department did not pay claimant for the weeks of August 30, 2020 through September 5, 2020 (week 36-20) or December 27, 2020 through January 2, 2021 (week 53-20).

(4) From December 2018 through August 31, 2020, claimant did not perform work or earn any wages.

(5) On September 1, 2020, claimant began an employment and training program administered by a nonprofit organization and funded through a grant from the United States Department of Labor (USDOL). The employment and training program placed claimant with a host agency where she worked part-time and was paid a stipend funded through the USDOL grant.

(6) In December 2020, the nonprofit organization lost its USDOL grant funding and went out of business. Claimant was transferred to a new nonprofit organization that took over responsibility for managing the employment and training program effective January 1, 2021. While claimant's employment was being transferred to the new nonprofit organization, claimant was advised that she would not be performing any work for the program from December 27, 2020 through December 31, 2020.

CONCLUSIONS AND REASONS: Claimant is not eligible for PUA benefits for the weeks from March 22, 2020 through September 5, 2020 (weeks 13-20 through 36-20), September 13, 2020 through September 19, 2020 (week 38-20), and December 27, 2020 through January 2, 2021 (week 53-20).

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 the following reasons:

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public

health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) 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;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section.

Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I).

The record does not show that during the weeks at issue claimant was unemployed, partially unemployed, or unable or unavailable to work as a result of any of the 11 reasons listed in § 2102(a)(3)(A)(ii)(I) of the Act. Claimant completed her last work assignment with her former employer – a temporary employment agency – in December 2018, but then did not work again until she began the employment and training program on September 1, 2020. Thus, at the time claimant claimed her first week of PUA benefits, week 13-20, claimant had not worked for the former employer for over 14 months, which shows that claimant likely did not work during week 13-20 because she was not employer-attached, and not due to a COVID-19 related reason. Moreover, when asked to identify the COVID-19 related reason(s) she believed qualified her to receive PUA benefits for the weeks at issue, claimant stated, “[the temporary employment agency] would have closed up the business so the public couldn’t go in to see or talk to people, and people were working home remotely.” Transcript at 14. This testimony shows that claimant did not actually know whether the temporary employment agency had closed. Claimant’s testimony, coupled with the record evidence indicating that claimant had not worked for a significant period of time prior to the first week she claimed PUA benefits, shows that claimant was not unable to work during weeks 13-20 through 36-20 due to a COVID-19 related reason. As such,

claimant was not a covered individual under the Act during weeks 13-20 through 36-20, and was ineligible to receive PUA benefits for those weeks.

Likewise, the record does not show that any of the COVID-19 related qualifying reasons listed in § 2102(a)(3)(A)(ii)(I) which support PUA eligibility applied to claimant's situation during weeks 38-20 and 53-20. Rather, the record shows that during these weeks, claimant was a participant in an employment and training program. To the extent claimant was not able to work during week 53-20, the record shows that this was the result of a change in the management of the program from one nonprofit organization to another, and for reasons unrelated to the COVID-19 pandemic. As such, the record fails to show that claimant was a covered individual under the Act during weeks 38-20 and 53-20, and claimant therefore is also ineligible for PUA benefits for those weeks.

DECISION: Order No. 22-UI-186692 is modified, as outlined above.

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

DATE of Service: May 6, 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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