

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0593

Affirmed

Ineligible for Pandemic Unemployment Assistance Weeks 06-20 through 49-20

PROCEDURAL HISTORY: On November 1, 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 from February 2, 2020 through December 5, 2020 (weeks 06-20 through 49-20). Claimant filed a timely request for hearing. On May 9, 2022, ALJ Roberts conducted a hearing, and on May 16, 2022 issued Order No. 22-UI-193786, affirming the November 1, 2021 PUA determination. On May 23, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On March 30, 2021, claimant filed an initial claim for PUA benefits. The Department determined that claimant's PUA claim was effective December 6, 2020.¹ Claimant subsequently claimed and was paid for PUA benefits for the weeks from December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21). Claimant was not aware of the PUA program or his potential eligibility for PUA benefits prior to March 30, 2021, although he had access to the internet during 2020 and 2021, and could have accessed the Department's website to learn about the program.

(2) On August 24, 2021, claimant received a "federally required" notice from the Department stating that he had until October 6, 2021 to "file a backdate PUA claim certification." Transcript at 8.

(3) On September 9, 2021, claimant filed weekly claims for the weeks from February 2, 2020 through December 5, 2020 (weeks 06-20 through 49-20), the weeks at issue. The Department did not pay claimant benefits for those weeks.

¹ EAB has taken notice of this fact, which is contained 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 fact will remain in the record.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive PUA benefits during 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,” but is rendered unemployed or unavailable to work because of one or more of eleven reasons. Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I). 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.

Claimant filed his initial claim for PUA benefits on March 30, 2021, with an effective date of December 6, 2020. Thereafter claimant claimed and was paid for PUA benefits for weeks 50-20 through 35-21. Claimant later filed claims for the weeks at issue, effectively requesting to backdate his PUA claim to February 2, 2020. Claimant apparently was motivated to do so by a notice that the Department sent to him on August 24, 2021, which stated, in relevant part:

If you filed your initial claim after December 27, 2020, and meet the COVID-19 reason, you may backdate your initial claim to December 6, 2020.

You may be eligible for backdating if you experienced barriers to filing prior to December 28, 2020. If you think this applies to you, please tell us what barrier you experienced so we can determine whether you qualify for backdating.

Exhibit 1 at 114.

Notwithstanding the above notice, claimant was not, under the CAA, eligible to backdate his PUA claim to any date earlier than December 6, 2020 because he did not file his initial claim until March 30, 2021. At hearing, the Department’s witness testified that the Department reviewed claimant’s case to determine if there was a “true barrier” that prevented claimant from filing his claim prior to December 28, 2020, and further explained that barriers to filing included circumstances beyond an individual’s control, such as losing their home or not having a phone due to not being able to pay their phone bill.

Transcript at 6, 11. The Department’s witness also testified that claimant’s reason for not filing prior to December 28, 2020—because he was unaware of the PUA program at that point—did not constitute a valid “barrier” to filing that would permit him to backdate his claim to earlier than December 6, 2020. Transcript at 9.

The limits of the Department’s discretion in determining what constitutes a valid “barrier” to filing are not entirely clear from the record. Nevertheless, under the description given at hearing, and based on claimant’s reason for failing to file his initial claim prior to December 28, 2020, claimant’s failure to file earlier was not due to circumstances beyond his control. Although claimant was not aware of the PUA program prior to March 2021, he did not meet his burden² to show that he had no reasonable way of becoming aware of the program earlier, particularly since he had access to the internet in 2020 and 2021. Because claimant did not show that he had a “barrier” to filing prior to December 28, 2020, and because he did not actually file his initial claim until March 2021, claimant is not eligible to backdate his claim to earlier than December 6, 2020. Claimant therefore was not eligible to receive PUA benefits for the weeks at issue.

DECISION: Order No. 22-UI-193786 is affirmed.

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

DATE of Service: August 17, 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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² *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits).



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

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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