

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0672

Reversed & Remanded

PROCEDURAL HISTORY: On April 15, 2022, 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 for the weeks including May 16, 2021 through September 4, 2021 (weeks 20-21 through 35-21). Claimant filed a timely request for hearing. On May 24, 2022, ALJ Monroe conducted a hearing, and on June 1, 2022 issued Order No. 22-UI-186782, affirming the April 15, 2022 administrative decision. On June 13, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 1, 2020, claimant filed an initial application for PUA benefits. The Department determined that claimant established a valid claim for PUA benefits, and claimant claimed and was paid benefits for several weeks between February 2, 2020 and May 16, 2021.

(2) Claimant lived in a rural area with limited cell phone reception and no computer access. Claimant usually filed weekly continued claims for PUA benefits with the assistance of a friend, who filed the claims on claimant's behalf.

(3) On August 18, 2021, the Department sent notices by mail or email to all individuals who claimed PUA benefits between February 2, 2020 and August 1, 2021, including claimant, advising that the PUA program was scheduled to expire on September 6, 2021 and that claimant had until October 6, 2021 to file weekly continued claims for PUA benefits. Claimant did not receive the Department's notices. Claimant's mail was frequently stolen and his access to email through his cell phone was such that he had to "get a ride six miles down the road to check [his] emails and stuff." Transcript at 14.

(4) At some point after June 2, 2021, claimant's friend became ill with COVID-19 and claimant was unable to see the friend. About a month after losing contact with the friend, claimant saw them again. The friend told claimant that they had tried filing some weekly continued claims on claimant's behalf but were unable to do so. Thereafter, claimant tried calling the Department on a weekly basis but could not get through or his calls were dropped.

(5) On April 8, 2022, claimant successfully called the Department and filed weekly continued claims for PUA benefits for the weeks of May 16, 2021, through September 4, 2021 (weeks 20-21 through 35-21). These are the weeks at issue.

(6) A group within the Department called the Barrier Review Committee reviewed claimant's late continued claims for the weeks at issue and concluded that there were not conditions beyond claimant's control that prevented him from claiming the weeks at issue by October 6, 2021. Based on the committee's review, the Department did not pay claimant PUA benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Order No. 22-UI-195002 is set aside, and this matter remanded for further proceedings consistent with this order.

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 CARES Act authorizes covered individuals to receive PUA benefits for a maximum of 39 weeks. The maximum number of weeks payable under PUA was extended to 50 weeks by the Continued Assistance Act.¹ U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) (UIPL 16-20, Change 4), at 2. On March 11, 2021, Congress enacted the American Rescue Plan Act of 2021 (ARPA), Pub. L. 117-2, which extended the maximum number of weeks payable under PUA from 50 to 79 and called for the expiration of the PUA program effective September 6, 2021.

For states in which a week of unemployment ends on a Saturday, such as Oregon, the last payable week of PUA is the week ending September 4, 2021 (week 35-21). U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 6 (September 3, 2021) (UIPL 16-20, Change 6), at 11. "PUA may not be paid for any weeks of unemployment ending after September 6, 2021, though payment for weeks of unemployment ending before September 6, 2021, may occur at a later date." UIPL 16-20 Change 6 at II-2. As applicable here, federal guidance requires that states "must accept continued claim forms for 21 days after . . . the program expiration date[.]" UIPL 16-20 Change 6 at II-2. Thus, in this case, pursuant to UIPL 16-20 Change 6 at II-2, the Department was required to accept claimant's weekly continued claims for the weeks at issue until at least 21 days after the expiration of the PUA program, which was September 27, 2021.

Here, however, the Department imposed a deadline of October 6, 2021 for claimant to submit his weekly continued claims for PUA benefits and would have accepted claimant's weekly claim forms even after the October 6, 2021 deadline had it concluded there was a barrier preventing claimant from filing. Because federal guidance specifies that payment of PUA benefits for weeks before September 6, 2021 may occur at a later date, the Department was not prohibited from imposing a deadline later than September 27, 2021 to accept claimant's PUA continued claim forms. *See* UIPL 16-20 Change 6 at II-2. Therefore, the Department had the latitude to use the later deadline of October 6, 2021 and to accept weekly claim forms where there was a barrier even after the October 6, 2021 deadline.

The order under review concluded that claimant was not eligible for PUA benefits for the weeks at issue because he did not file his continued claim forms by October 6, 2021 or show that a barrier prevented

¹ The Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 was signed into law on December 27, 2020.

him from filing by the deadline. Order No. 22-UI-195002 at 4. The record as developed does not support this conclusion.

Remand is necessary because it is not evident what standard the Department applied to determine that claimant did not have a barrier sufficient to justify accepting his late weekly PUA claim forms. At hearing, the Department witness testified that the barrier committee reviewed claimant's situation and "it was determined that a barrier was not a factor in this case." Transcript at 7. As to the applicable standard, the Department witness testified only that the committee determines "if there were conditions that were beyond the control of the individual that kept them from claiming, um, such as being homeless or hospitalized. Um, in those, uh, cases, uh, the barrier would be accepted." Transcript at 7-8. However, to meaningfully review the Department's determination, it is necessary to know why the Department decided that claimant's circumstances did not amount to a barrier. *See Dye v. Employment Department*, 125 P.3d 775, 777 (Or. App. 2005) (reversing and remanding where EAB determined that a party's request to reopen that was delayed seven days was not filed promptly but EAB failed to explain why waiting seven days to file was not prompt).

On remand, the ALJ should inquire as to what administrative rule, internal memoranda, federal guidance or other U.S. Department of Labor requirement, settlement agreement, or similar source of authority actually establishes the standards applied by the barrier committee, and once identified, urge the Department representative to offer a copy of the authority as an exhibit. Next, the ALJ should ask questions to determine what the precise legal standards are that govern whether a barrier exists. To this end, in order to draw out what the standard actually is, the ALJ should ask the Department witness to identify what it is about homelessness or hospitalization that meets the standard and whether any circumstances other than homelessness or hospitalization can amount to a barrier for purposes of accepting late PUA continued claim forms. The ALJ should also ask questions to determine whether there was any point in time after the October 6, 2021 deadline (such as the passage of months or years after the deadline) in which claimant's late PUA continued claim forms would be unacceptable even where a barrier to filing did exist. Along these lines, the ALJ should inquire whether the Department's barrier analysis operates similarly to OAR 471-040-0010 (February 10, 2012) such that when the factor(s) (if any) that constituted a barrier ceased to exist, claimant had a defined time period, similar to the seven-day "reasonable time" under OAR 471-040-0010, to file his late continued claims. Once a record is made of the precise legal standard that governs whether a barrier exists, the ALJ should ask any additional questions about the circumstances claimant faced that are necessary to conduct the barrier analysis adequately.

Because the ALJ's inquiry on remand will require detailed testimony about the nature and extent of the Department's barrier analysis, the Department is encouraged to assign a representative to appear at the hearing on remand who is well-versed in the barrier committee and the standards it applies.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of claimant is eligible to receive PUA benefits for the weeks at issue, Order No. 22-UI-195002 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-195002 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 20, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-195002 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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