

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0917

Reversed

Eligible for Pandemic Unemployment Assistance Weeks 53-20 through 16-21 and 18-21 through 20-21

PROCEDURAL HISTORY: On May 4, 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 starting December 27, 2020 because he failed to provide acceptable proof of employment or self-employment within the required period. Claimant filed a timely request for hearing. On February 10, 2022, ALJ Frank conducted a hearing, and on February 17, 2022 issued Order No. 22-UI-186782, affirming the May 4, 2021 administrative decision. On February 21, 2022, claimant filed an application for review with the Employment Appeals Board (EAB). On April 25, 2022, EAB issued 2022-EAB-0259, which reversed and remanded the matter for further development of the record. On August 18, 2022, ALJ Frank conducted a hearing, and on August 25, 2022 issued order No. 22-UI-201390, again affirming the May 4, 2021 administrative decision. On August 29, 2022, claimant filed an application for review with 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 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) At some point prior to 2019, claimant retired. Before he retired, claimant had worked for ten years in the landscaping industry. In 2019, claimant, although retired, performed landscaping services for individuals and was paid by the individuals for performing the services.

(2) On June 8, 2020, claimant filed an initial claim for PUA benefits with the Department. The Department determined claimant had a valid claim for PUA benefits with a first effective week of March 15, 2020. Thereafter, claimant claimed and received PUA benefits for multiple consecutive weeks in 2020.

(3) In late December 2020, Congress enacted a law that modified the PUA program to require, among other things, that PUA claimants submit documentation to substantiate their self-employment within a

specified period of time. Under the new law, if an individual failed to meet the self-employment substantiation requirement there would be no effect on PUA benefits received for weeks *before* December 27, 2020, but such individuals would be considered not eligible for PUA benefits claimed for weeks occurring *after* December 27, 2020.

(4) On January 30, 2021, the Department notified claimant of his obligation to provide documentation substantiating his self-employment by April 30, 2021. On April 22, 2021, claimant submitted an affidavit to the Department to satisfy the self-employment substantiation requirement. The Department reviewed the affidavit and concluded that it was not acceptable proof of self-employment.

(5) On April 27, 2021, claimant submitted an additional set of documents intended to satisfy the self-employment substantiation requirement. The Department did not review this submission. The Department then extended the deadline for claimant to satisfy the substantiation requirement several times, and claimant made numerous follow-up submissions. However, none of claimant's follow-up submissions met the substantiation requirement to the satisfaction of the Department.

(6) Claimant claimed PUA benefits for the weeks including December 27, 2020 through April 17, 2021 (weeks 53-20 through 15-21), April 18, 2021 through April 24, 2021 (week 16-21), and May 2, 2021 through May 22, 2021 (weeks 18-21 through 20-21). These are the weeks at issue. The Department paid claimant benefits for weeks 53-20 through 15-21. The Department did not pay claimant benefits for week 16-21 or weeks 18-21 through 20-21.

CONCLUSIONS AND REASONS: Claimant was eligible to receive PUA benefits for the weeks including December 27, 2020 through April 24, 2021 (weeks 53-20 through 16-21) and May 2, 2021 through May 22, 2021 (weeks 18-21 through 20-21).

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).

In addition, section 2102(a)(3)(A)(iii) of the CARES Act, as amended by Section 241(a) of the Continued Assistance for Unemployed Workers Act of 2020 ("CAA"),¹ requires individuals to submit documentation to substantiate their employment or self-employment within a specified period of time in order to meet the definition of a "covered individual." As explained by federal guidance, the provision requires that "individuals who have an existing PUA claim as of December 27, 2020" and "who receive PUA on or after December 27, 2020, must provide documentation within 90 days of the application date

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.

or the date the individual is instructed to provide such documentation by the state agency (whichever date is later).” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) (UIPL 16-20, Change 4), at I-10.

Acceptable proof of 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.” UIPL 16-20, Change 4 at I-10. If an individual fails to submit such documentation within the required timeframe, under Section 241(b)(2) of the CAA, the individual is not considered ineligible for PUA benefits received before December 27, 2020 but is otherwise not eligible for PUA and “the state may . . . establish an overpayment for those weeks of unemployment ending on or after December 27, 2020[.]” UIPL 16-20, Change 4 at I-11.

The order under review concluded that claimant was not eligible to receive PUA benefits for the weeks at issue because claimant did not submit “reliable documentary evidence” of self-employment. Order No. 22-UI-201390 at 3. The record does not support this conclusion.

The record shows that the deadline for claimant to provide documentation substantiating his self-employment was April 30, 2021. This is because claimant had an existing PUA claim as of December 27, 2020 and received PUA benefits after that date, and therefore, pursuant to UIPL 16-20, Change 4, the deadline for claimant to provide substantiating documentation was 90 days after January 30, 2021, the date when the Department notified claimant of his obligation to substantiate. The record shows that the Department extended the deadline beyond April 30, 2021 several times and claimant made additional submissions thereafter. However, the materials claimant submitted on April 27, 2021 were sufficient to meet the substantiation requirement whether the deadline was April 30, 2021 or a later date because of the Department’s extensions.²

Under UIPL 16-20, Change 4, acceptable proof of 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. UIPL 16-20, Change 4 at I-10. Among the documentation claimant submitted on April 27, 2021 was a 2019 Oregon state tax return that showed \$3,700 in income from claimant’s landscaping activities in 2019. Exhibit 2 at 63. Also included were handwritten notes listing dates in 2019 of specific landscaping activities claimant provided, the names of individuals who received the services, and the amounts those individuals paid claimant. Exhibit 2 at 45. In addition, claimant included numerous pages of 2019 month-by-month calendar entries that, on certain days, list landscaping activities, the amounts claimant was paid, and the names of the individuals for whom claimant performed the services. Exhibit 2 at 46-57.

On balance, these materials are sufficient to meet the test for acceptable proof of self-employment as set forth by federal guidance. The materials claimant submitted include a 2019 state tax return, a type of

² At hearing, claimant testified that that he made the April 27, 2021 submission to the Department on that date and cited to portions of Exhibit 2 that represented the materials included in the April 27, 2021 submission. Audio Record at 16:38; 26:13. In contrast, the witness for the Department testified that she did not believe but could “double check” whether claimant submitted anything other than affidavits on April 22, 2021 and January 20, 2022. Audio Record at 13:30. The witness also did not see that the materials from claimant’s April 27, 2021 submission were in the Department’s system to be evaluated. Audio Record at 20:01. The weight of the evidence supports that claimant submitted the April 27, 2021 documentation to the Department on that date given that his account is first hand and the materials appear in Exhibit 2.

document UIPL 16-20, Change 4 explicitly mentions as acceptable. Although the handwritten notes and calendar entries are not types of documentation specifically mentioned by UIPL 16-20, Change 4, these types of documents are not necessarily precluded from being considered in light of the use of the words “includes, but is not limited to” in the portion of the federal guidance document that lists what is acceptable. UIPL 16-20, Change 4 at I-10. Given that the notes and calendar entries contain a fair amount of detail about claimant’s 2019 landscaping activities, they, in combination with the 2019 state tax return, are sufficient to be acceptable proof of claimant’s self-employment.

These materials should also be considered alongside the affidavit that claimant submitted on April 22, 2021, which was also submitted prior to the April 30, 2021 deadline. This affidavit is also a type of document specifically enumerated by federal guidance as being sufficient to substantiate self-employment. In the affidavit, the affiant attested that claimant hired the affiant as an assistant on some larger landscaping projects. Exhibit 2 at 98. The affidavit, when considered along with the aforementioned materials, bolsters the conclusion that claimant submitted acceptable proof of self-employment and did so in a timely manner.

Accordingly, claimant provided the Department with documentation substantiating his self-employment and did so within 90 days of the date he was instructed to do so by the Department. Therefore, claimant was eligible to receive PUA benefits for the weeks at issue, December 27, 2020 through April 24, 2021 (weeks 53-20 through 16-21) and May 2, 2021 through May 22, 2021 (weeks 18-21 through 20-21).

DECISION: Order No. 22-UI-201390 is set aside, as outlined above.

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

DATE of Service: November 23, 2022

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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