

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1117

Affirmed

Ineligible for Pandemic Unemployment Assistance Weeks 14-20 through 18-20

PROCEDURAL HISTORY: On February 15, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective March 15, 2020. Claimant filed a timely request for hearing. On October 26, 2022, ALJ Scott conducted a hearing, and on November 2, 2022 issued Order No. 22-UI-206487, affirming the February 15, 2022 PUA determination. On November 7, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on December 12, 2022 and December 30, 2022. Although claimant's December 12, 2022 written argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (May 13, 2019), EAB considered that argument when reaching this decision because EAB granted claimant an extension to file the argument by December 12, 2022. Claimant also requested an extension to file his December 30, 2022 written argument. However, EAB denied that request because to extend the deadline to file beyond December 12, 2022, would mean the total period allowed for written argument, including all extensions, would exceed 35 days from the application for review filing date, which is not permitted under OAR 471-041-0080(4)(a)(E). Therefore, EAB did not consider claimant's December 30, 2022 written argument when reaching this decision.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the February 15, 2022 administrative decision and the notice of hearing in this case, which have been marked respectively as EAB Exhibit 1 and EAB Exhibit 2, and copies provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 and EAB Exhibit 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) Prior to October 2019, claimant lived in Washington, D.C. and worked for a law firm that maintained an office there. In October 2019, claimant voluntarily left his job at that law firm. Claimant had earned sufficient wages from the law firm during the base period preceding his voluntary quit to be monetarily eligible for a regular unemployment insurance (regular UI) claim under Washington, D.C.'s unemployment insurance program. However, claimant did not file a Washington, D.C. regular UI claim.

(2) When he quit working at the law firm, claimant, who was a lawyer, researched the unemployment insurance law of Washington, D.C. Based on his research, claimant concluded that voluntarily quitting his job would disqualify him from receiving benefits under Washington, D.C.'s program.

(3) When he quit his job in Washington, D.C. or shortly thereafter, claimant moved to Oregon and started a solo law practice. Claimant performed services for a client between December 20, 2019 and March 10, 2020 but was unable to fulfill the contract because, following the onset of the COVID-19 pandemic, claimant's son's school closed. Claimant's spouse worked and claimant had to stay home to care for his son due to the school closure. The pandemic also interfered with claimant's efforts to get a new job. The pandemic caused one open position he was pursuing to close and the start date for another job, which claimant ultimately obtained, was pushed back to a later date.

(4) On May 2, 2022, claimant filed an initial application for PUA benefits. Thereafter, he claimed PUA benefits for the weeks including March 29, 2020 through May 2, 2020 (weeks 14-20 through 18-20).¹ These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(5) When the Department processed claimant's PUA claim, it used a database to confirm that claimant had earned sufficient wages to be monetarily eligible for a regular UI claim under Washington, D.C.'s program. Based on this information, the Department concluded that claimant was eligible for a regular UI claim under Washington, D.C.'s program and, therefore, was not eligible to receive PUA benefits. To be eligible for PUA, the Department concluded that claimant would need to file a Washington, D.C. regular UI initial claim and provide the Department with documentation showing that such a claim was nonvalid or that claimant was disqualified from receiving benefits under it.

(6) On a number of occasions, claimant contacted the Department about the status of his PUA claim. During one of these calls, on October 2, 2020, a Department representative advised claimant that the Department considered him ineligible for PUA because "he was eligible to establish a regular UI claim in Washington, D.C." Transcript at 8. Nevertheless, claimant did not file a Washington, D.C. regular UI initial claim.

(7) On February 15, 2022, the Department issued the February 15, 2022 administrative decision to claimant. The decision stated that it was a "**NOTICE OF DETERMINATION FOR PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)**" and further that "You are NOT ENTITLED to PUA benefits. Please see below." EAB Exhibit 1 at 1 (emphasis in original). The decision explained "**You are not entitled to PUA because:** You are eligible for a regular unemployment claim, extension, or

¹ EAB has taken notice of these facts, which are 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.

extended benefits in Oregon or another state.” EAB Exhibit 1 at 1 (emphasis in original). The decision also stated, “Laws and rules used to make this decision: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 and 20 C.F.R. 625 Disaster Unemployment Assistance.” EAB Exhibit 1 at 2.

(8) Claimant requested a hearing on the February 15, 2022 administrative decision. On October 11, 2022, the Office of Administrative Hearings (OAH) served claimant with a Notice of Hearing scheduling a hearing on the February 15, 2022 administrative decision. The hearing notice explained the issue to be considered was “**Whether claimant is entitled to Pandemic Unemployment Assistance (PUA) under The Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act), Public Law (Pub L.) 116-236.**” EAB Exhibit 2 at 1 (emphasis in original). The notice also included the language of the section of the CARES Act that governs the PUA program. EAB Exhibit 2 at 12-15.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive Pandemic Unemployment Assistance benefits for the weeks including March 29, 2020 through May 2, 2020 (weeks 14-20 through 18-20).

Claimant did not receive PUA benefits for the weeks at issue and, therefore, claimant had the burden to prove that he should have been paid benefits for those weeks. *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).

To be entitled to receive PUA benefits under the CARES Act, an individual must be a “covered individual” as that term is defined by the Act. 15 U.S.C. § 9021(b). In pertinent part, 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 because of one of the eleven listed reasons. 15 U.S.C. § 9021(a)(3)(A). Regulations at 20 C.F.R. part 625, which pertain to the Disaster Unemployment Assistance program, apply to the PUA program, unless otherwise provided or contrary to the Act. 15 U.S.C. § 9021(h).

“PUA is a benefit of last resort for anyone who does not qualify for other [unemployment compensation] programs[.]” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) (UIPL 16-20, Change 1), at I-8. One scenario in which a person is regarded as not eligible for regular UI (and thus can meet the first element of “covered individual” status) is if they are disqualified from receiving regular UI benefits because of a disqualifying work separation that occurred prior to the individual’s COVID-19 related reason. UIP 16-20, Change 1 at I-8. However, if a person has “wages in the base period but no claim is filed, or a job separation that has not been adjudicated[.]” then the state “must first require the individual to file a regular [unemployment] claim.” UIP 16-20, Change 1 at I-7. Then, “only if the individual is subsequently disqualified from receiving regular [unemployment],” must the state consider the individual for PUA eligibility. UIP 16-20, Change 1 at I-7. If a person does not have an active regular UI claim with a disqualification, it is not sufficient for them to simply attest that

they are ineligible for regular UI. UIPL 16-20, Change 1 at I-6 (“Self-attestation is not sufficient to demonstrate ineligibility for regular [unemployment][.]”).

Applying these principles, claimant failed to establish that he was not eligible for regular unemployment compensation under State or Federal law and thus failed to meet the first element of “covered individual” status. The record shows that when claimant filed his initial application for PUA benefits, he had earned wages in his base period sufficient to be monetarily eligible for a regular UI claim under Washington, D.C.’s unemployment insurance program and his voluntary quit from the Washington, D.C. law firm was not adjudicated. At hearing, claimant acknowledged his monetary eligibility for a Washington, D.C. regular UI claim but argued that he remained ineligible to receive benefits under Washington, D.C. law because, based on his research, his voluntary leaving from the law firm job would disqualify him from receiving benefits. Transcript at 9. However, because claimant never filed a Washington, D.C. regular UI claim, it remains unknown whether his voluntary quit would have been disqualifying and, per U.S. Department of Labor guidance, his self-attestation, based on his research, that he would be disqualified “is not sufficient to demonstrate ineligibility for regular [unemployment][.]” UIPL 16-20, Change 1 at I-6.

Moreover, review of the authorities governing the unemployment insurance law of Washington, D.C. suggests that it was no foregone conclusion that claimant’s voluntary quit was disqualifying. D.C. Code § 51-110(a)(1) provides that an individual is not eligible for benefits if they leave work “voluntarily without good cause connected with the work, as determined under duly prescribed regulations[.]” Regulations set forth a reasonable and prudent person test for good cause. D.C. Municipal Regulations § 7-311.5. Regulations also establish some factual scenarios that do not amount to good cause to quit and others that are considered good cause *per se*. See D.C. Municipal Regulations §§ 7-311.6 & 7-311.7. An additional scenario that supports good cause to quit is if an individual quits work to accompany their relocated spouse to a place from which it is impractical for the individual to commute to work. See D.C. Dep’t of Employment Services, Claimant’s Rights and Responsibilities at 8, *available at* https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/DOES_UI_Book.pdf. It is unknown why claimant quit working for the Washington, D.C. law firm. However, the fact-specific nature of the reasonable and prudent person test, as well as the presence of numerous fact situations that *per se* amount to good cause give rise to the very real possibility that claimant’s voluntary quit might not have been disqualifying.

In his written argument, claimant asserts, quoting from federal guidance, that a person may be eligible for PUA if they are disqualified because of a prior separation issue. December 12, 2022 Written Argument at 1, *quoting* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) (UIPL 16-20, Change 2), at I-5. This assertion is correct, but misses the point. To establish that his separation from the Washington, D.C. law firm actually was disqualifying, claimant was required to file a Washington, D.C. regular UI claim, and only if he was “subsequently disqualified from receiving regular [unemployment],” by the agency that administers the Washington, D.C. program was the Department required to consider him for PUA eligibility. UIPL 16-20, Change 1 at I-7. The guidance states repeatedly that an individual in claimant’s situation, where a “job separation . . . has not been adjudicated,” has eligibility for regular UI that is “questionable” and therefore “the state must first require the individual to file a regular [unemployment] claim.” UIPL 16-20, Change 1 at I-7; *accord* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020), at I-9; U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021), at I-

18. Because claimant did not file a Washington, D.C. regular UI claim and prove that his voluntary quit was disqualifying, he did not establish that he was not eligible for regular unemployment compensation. Accordingly, claimant was not a “covered individual” within the meaning of the CARES Act and was not eligible to receive PUA benefits for the weeks at issue.

Claimant also asserted in his written argument that the February 15, 2022 administrative decision was deficient and did not provide him with adequate notice as required by OAR 471-030-0039(3)(b) and (c) (effective January 11, 2018). December 12, 2022 Written Argument at 1. Under OAR 471-030-0039(3)(b), the February 15, 2022 administrative decision was required to contain “Identification of the issues, laws and rules involved[.]” Under subpart (3)(c), the administrative decision was required to contain “Facts, reasoning and conclusions necessary for clarity and understanding[.]” The record shows that the February 15, 2022 administrative decision met the requirements of OAR 471-030-0039(3)(b) and (c).

As to identifying the issue, the administrative decision stated that it was a “**NOTICE OF DETERMINATION FOR PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)**” and further that “You are NOT ENTITLED to PUA benefits. Please see below.” EAB Exhibit 1 at 1 (emphasis in original). These statements were sufficient to identify the issue. The February 15, 2022 administrative decision also identified the “laws and rules involved,” by stating, “Laws and rules used to make this decision: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 and 20 C.F.R. 625 Disaster Unemployment Assistance.” EAB Exhibit 1 at 2. As to the “Facts, reasoning and conclusions necessary for clarity and understanding[.]” the administrative decision explained “**You are not entitled to PUA because:** You are eligible for a regular unemployment claim, extension, or extended benefits in Oregon or another state.” EAB Exhibit 1 at 1 (emphasis in original).

Furthermore, claimant received actual notice of the issue and reasoning on October 2, 2020, when a Department representative advised him that the Department considered him ineligible for PUA because “he was eligible to establish a regular UI claim in Washington, D.C.” Transcript at 8. Finally, claimant received additional notice of the issue via the Notice of Hearing in this case, which explained the issue to be considered as “**Whether claimant is entitled to Pandemic Unemployment Assistance (PUA) under The Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act), Public Law (Pub L.) 116-236.**” EAB Exhibit 2 at 1 (emphasis in original). The notice also included the language of the section of the CARES Act that governs the PUA program, thereby providing additional notice of the laws and rules involved. EAB Exhibit 2 at 12-15. Based on the foregoing, claimant was on adequate notice of the issues, laws and rules, facts, reasoning and conclusions that pertained to this case.

For the reasons set forth above, claimant did not constitute a covered individual under the law governing the PUA program and was therefore not entitled to receive PUA benefits for weeks 14-20 through 18-20.

DECISION: Order No. 22-UI-206487 is affirmed.

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

DATE of Service: January 17, 2023

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 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
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