

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1225

Modified

*Eligible for Pandemic Unemployment Assistance Weeks 14-20 through 35-21
PUA Weekly Benefit Amount Redetermined to \$406 per week*

PROCEDURAL HISTORY: On September 20, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits and was not entitled to a PUA weekly benefit amount redetermination. Claimant filed a timely request for hearing. On October 26, 2022, the Office of Administrative Hearings (OAH) served a notice of a hearing scheduled for November 9, 2022. On November 9, 2022, ALJ Frank and the parties convened briefly but no evidence was taken and, at the ALJ's insistence, the hearing was postponed for claimant to re-submit in a more manageable format documents she already had submitted to OAH. On November 16, 2022, ALJ Frank conducted the hearing, and on November 23, 2022 issued Order No. 22-UI-208149, modifying¹ the September 20, 2021 PUA determination by concluding that claimant was eligible for PUA benefits from March 29, 2020 through September 4, 2021 (weeks 14-20 through 35-21) but was not entitled to a redetermination of her PUA weekly benefit amount. On December 10, 2022, claimant filed an application for review of Order No. 22-UI-208149 with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: Prior to November 9, 2022, claimant submitted documents to OAH for consideration by the ALJ to admit as evidence at the hearing that was scheduled for November 9, 2022. Among these documents was claimant's profit-and-loss statement for each month of 2019. However, when the ALJ and parties convened on November 9, 2022, the ALJ stated that he was unable to manage the documents claimant submitted, so at the ALJ's insistence, the hearing was postponed to November 16, 2022, and claimant was made to resubmit the documents she wanted admitted into evidence. November 9, 2022 Audio Record at 6:31 to 9:47. The 2019 profit-and-loss statement was not included in

¹ Although Order No. 22-UI-208149 stated that it was setting aside the September 20, 2021 administrative decision, it modified that decision because it reversed the portion of the administrative decision that concluded that claimant was not eligible to receive PUA benefits but affirmed the portion of the decision denying a redetermination of claimant's PUA weekly benefit amount. Order No. 22-UI-208149 at 3.

the document re-submission claimant made for the November 16, 2022 hearing. OAR 471-041-0090(1) (May 13, 2019) provides that EAB may consider information not received into evidence at the hearing if necessary to complete the record. The 2019 profit and loss statement submitted by claimant is relevant and material to the merits of this case, and its admission into evidence is necessary to complete the record. Accordingly, the 2019 profit and loss statement, which EAB has marked as Exhibit 4, is admitted to complete the record. Any party that objects to the admission of Exhibit 4 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, Exhibit 4 will remain in the record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant was eligible for PUA benefits from March 29, 2020 through September 4, 2021 (weeks 14-20 through 35-21) is **adopted**. The remainder of this decision addresses the portion of the order under review denying a redetermination of claimant's PUA weekly benefit amount.

FINDINGS OF FACT: (1) Prior to March 2020, claimant was self-employed as a painter. The net income claimant earned from her painting business in 2019 was \$32,500. In March 2020, claimant's business shut down because of the COVID-19 pandemic.

(2) On October 28, 2020, claimant filed an initial application for PUA benefits. The Department determined claimant had a valid claim for PUA benefits. When claimant filed her initial application, she did not provide documentation of her net income from 2019. As a result, the Department determined her weekly benefit amount to be the PUA minimum of \$205.

(3) In May 2021, claimant contacted the Department inquiring about a redetermination of her weekly benefit amount. In June 2021, the Department informed claimant that it required a 2019 tax return transcript to redetermine claimant's benefit amount.

(4) On December 27, 2021, the Department sent claimant an email advising that she may submit a profit-and-loss statement for 2019 instead of a 2019 tax return transcript. Exhibit 2 at 2. On January 2, 2022, claimant submitted to the Department a profit-and-loss statement for each month of 2019 showing a total net income of \$32,500 for 2019. *See* Exhibit 4. The Department took no action after receiving the profit-and-loss statement.

(5) Claimant's efforts to get a 2019 tax return transcript from the Internal Revenue Service (I.R.S.) were delayed because of an I.R.S. backlog. Claimant eventually obtained the transcript and submitted it to the Department on August 24, 2022. The Department declined to redetermine claimant's weekly benefit amount with the information from the 2019 tax return transcript because it received the transcript after August 8, 2022. August 8, 2022 was an internal deadline the Department had imposed for all things related to PUA.

(6) Claimant claimed PUA benefits for the weeks from March 29, 2020 through September 4, 2021 (weeks 14-20 through 35-21). These are the weeks at issue. The Department paid claimant \$205 per week for each week of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was entitled to a PUA weekly benefit amount redetermination for the weeks from March 29, 2020 through September 4, 2021 (weeks 14-20 through 35-21), from \$205 per week to \$406 per week.

Under 15 U.S.C. § 9021(d)(2), a PUA claimant who is self-employed shall have their weekly benefit amount “calculated in accordance with section 625.6 of title 20, Code of Federal Regulations[.]” Section 625.6(a)(1) provides, in relevant part, that “in computing an individual's weekly amount . . . [the] benefit formula of the applicable State law shall be applied[.]” The effect of these provisions are that the weekly benefit amount “will be the amount of compensation an individual would have been paid regularly as computed under the provisions of the applicable state law, using the state’s existing wage records and any additional supporting evidence provided by the individual.” 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-4. The base period used to assess an individual’s PUA weekly benefit amount is the tax year ending prior to the first week the individual certifies their unemployment due to the COVID-19 public health emergency. U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) at I-20. Since the first week claimant claimed was in March 2020, claimant’s base period is the 2019 tax year.

In no event may a PUA claimant’s weekly benefit amount be less than 50 percent of the state’s average weekly payment of regular compensation in the state, as provided quarterly by the U.S. Department of Labor. 20 C.F.R. § 625.6(b). That minimum PUA weekly benefit amount figure is set forth in Unemployment Insurance Program Letter 03-20 (December 12, 2019) at I-1 and, for Oregon, is \$205. The Department assigned claimant the \$205 PUA minimum weekly benefit amount.

However, “States must accept documentation of income to determine a claimant’s eligibility for a higher PUA [weekly benefit amount] at any time during the Pandemic Assistance Period.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) at I-2. To compute the weekly benefit amount of a self-employed person, the state is required to use the person’s net income earned during the base period. UIPL 16-20, Change 1 at I-6. Acceptable documentation of income earned during the base period includes, but is not limited to, state agency wage records, pay check stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements. UIPL 16-20, Change 1 at I-5. “After the Pandemic Assistance Period ends September 6, 2021, the state must accept documentation to be considered for a higher [weekly benefit amount] for up to 21 days after the later of: i) the program expiration date; . . . or iii) the date the state notifies the individual of their ability to submit documentation to be considered for a higher [weekly benefit amount].” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 6 (September 3, 2021) (UIPL 16-20, Change 6), at II-2.

The order under review concluded that claimant did not demonstrate that she was entitled to a redetermination of her PUA weekly benefit amount. Order No. 22-UI-208149 at 3. The record does not support this conclusion and the order under review is modified accordingly.

The record shows that on December 27, 2021, the Department notified claimant of her ability to submit documentation to be considered for a higher weekly benefit amount when it sent an email to claimant on that date advising that claimant may submit a profit-and-loss statement for 2019. Therefore, per UIPL 16-20, Change 6 at II-2, the deadline for claimant to submit acceptable documentation for a

redetermination was 21 days after December 27, 2021, which was January 17, 2022 (because this date is later than 21 days after the PUA program's September 6, 2021 expiration). On January 2, 2022, claimant submitted to the Department a profit-and-loss statement for each month of 2019 showing a total net income of \$32,500 for 2019. *See* Exhibit 4. The profit-and-loss statement constituted business records or ledgers and therefore was acceptable documentation under UIPL 16-20, Change 1. The statement also showed net income claimant earned from self-employment in 2019, as is required to conduct a redetermination of a self-employed person's PUA weekly benefit amount. Thus, claimant submitted acceptable documentation for the Department to conduct a redetermination of her weekly benefit amount, and did so before the applicable deadline.

The redetermination of claimant's PUA weekly benefit amount is calculated via the benefits formula set forth under applicable State law, using the additional supporting evidence provided by claimant. UIPL 16-20, Change 1 at I-4. Applicable Oregon law provides that "An eligible individual's weekly benefit amount shall be 1.25 percent of the total wages paid in the individual's base year." ORS 657.150(4)(a). Claimant earned \$32,500 in net income from self-employment during her 2019 base period. 1.25 percent of \$32,500, when rounded to the nearest whole dollar, is \$406.

Therefore, claimant was entitled to receive a weekly benefit amount of \$406 for each of the weeks at issue. The Department must recalculate claimant's weekly benefit amount for the weeks at issue and "provide supplementary payment as appropriate." UIPL 16-20, Change 1 at I-5.

DECISION: Order No. 22-UI-208149 is modified, as outlined above.

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

DATE of Service: February 13, 2023

NOTE: This decision modifies an order that denied claimant a redetermination of benefits. Please note that payment of redetermined benefits, 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 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.

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