

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1248

Affirmed

Request to Reopen Allowed

Ineligible for PUA Weeks 35-20 through 38-20, 40-20 through 41-20, and 43-20 through 49-20
Eligible for PUA Weeks 50-20 through 28-21, 30-21, 32-21, and 34-21

PROCEDURAL HISTORY: On August 30, 2021, 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 December 6, 2020. Claimant filed a timely request for hearing. On August 29, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 15, 2022 at 10:45 a.m. On September 15, 2022, claimant failed to appear at the hearing. On September 16, 2022, ALJ Roberts issued Order No. 22-UI-202796, dismissing claimant's request for hearing due to her failure to appear. On September 30, 2022, claimant filed a timely request to reopen the hearing. On November 17, 2022, ALJ Monroe conducted a hearing, and on November 29, 2022 issued Amended Order No. 22-UI-208442, allowing claimant's request to reopen the hearing and modifying the August 30, 2021 administrative decision by concluding that claimant was not eligible to receive PUA benefits for the weeks including August 23, 2020 through September 19, 2020 (weeks 35-20 through 38-20), September 27, 2020 through October 10, 2020 (weeks 40-20 through 41-20), and October 18, 2020 through December 5, 2020 (weeks 43-20 through 49-20); but that claimant was eligible to receive PUA benefits for the weeks including December 6, 2020 through July 17, 2021 (weeks 50-20 through 28-21), July 25, 2021 through July 31, 2021 (week 30-21), August 8, 2021 through August 14, 2021 (week 32-21), and August 22, 2022 through August 28, 2022 (week 34-21).¹ On December 16, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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 claimant's written argument, an enclosed administrative decision dated December 6, 2022, and the original August 30, 2021 administrative decision, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to

¹ Amended Order No. 22-UI-208442 amended Order No. 22-UI-208177, issued on November 23, 2022, to correct typographical errors regarding claimant's dates of eligibility for benefits.

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 exhibit will remain in the record.

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

With her December 16, 2022 written argument, claimant enclosed a copy of an administrative decision dated December 6, 2022, which concluded that claimant was not eligible to receive PUA benefits because she “does not have ties to the Oregon labor market.” EAB Exhibit 1 at 2. This appears to be essentially the same basis for denial of benefits as the basis cited in the original August 30, 2021 administrative decision, which explained, “You need to apply in the state where you became unemployed due to a qualifying reason related to the COVID-19 pandemic.” EAB Exhibit 1 at 3. Both administrative decisions determined that claimant was ineligible for benefits effective December 6, 2020.

Given that the December 6, 2022 administrative decision cited the same date of ineligibility and a similar basis for ineligibility as the August 30, 2021 administrative decision, and given that a hearing had already been requested and conducted and a final order issued on the August 30, 2021 administrative decision, it appears that the Department may have issued the December 6, 2022 administrative decision in error.

This error appears to be the basis for claimant’s application for review in this matter. In her written argument, claimant, addressing the ALJ, stated that “Unfortunately [the Department] has decided that regardless of your honor’s decision that I am not eligible for benefits[.]” EAB Exhibit 1 at 1. Claimant did not assign any error to the order under review itself. As noted herein, EAB affirms the order under review, which concluded that claimant was eligible to receive PUA benefits after December 6, 2020 for a period of weeks claimed in late 2020 and in 2021. EAB’s decision therefore contradicts the Department’s conclusion in the December 6, 2022 administrative decision that claimant was not eligible to receive PUA benefits beginning December 6, 2020. However, that administrative decision is not at issue in this appeal, and EAB therefore lacks jurisdiction to address it directly. Given claimant’s concerns as indicated in her written argument, it appears that the written argument may be properly construed as a timely request for hearing on the December 6, 2022 administrative decision (since the written argument was faxed on December 16, 2022, which was within 20 days of the issuance of the December 6, 2022 administrative decision). Claimant should note that EAB has forwarded a copy of this decision, including her written argument and both administrative decisions, to the Department for review.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 22-UI-208442 is affirmed.

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

DATE of Service: February 13, 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.

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