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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0495

Modified
Late Request for Hearing Allowed
Ineligible for PUA Weeks 06-20 through 11-20
Eligible for PUA Weeks 12-20 through 14-20

PROCEDURAL HISTORY: On February 19, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was eligible for PUA benefits for 50 weeks beginning April 5, 2020. On March 11, 2021, the February 19, 2021 PUA determination became final without claimant having filed a request for hearing. On September 13, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 15, 2021 issued Order No. 21-UI-177261, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 29, 2021. On October 29, 2021, claimant filed a timely response to the appellant questionnaire. On January 20, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-177261 was vacated and that a new hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of the February 19, 2021 PUA determination. On April 4, 2023, ALJ Lucas conducted a hearing, and on April 11, 2023 issued Order No. 23-UI-221691, allowing claimant's late request for hearing and affirming the February 19, 2021 PUA determination by concluding that claimant was not eligible for PUA benefits from February 2 through April 4, 2020 (weeks 06-20 through 14-20). On April 27, 2023, claimant filed an application for review of Order No. 23-UI-221691 with the Employment Appeals Board (EAB).

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

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 allowing claimant's late request for hearing is **adopted**. The remainder of this decision addresses the merits of the February 19, 2021 PUA determination.

FINDINGS OF FACT: (1) On June 15, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed benefits for the weeks from February 2, 2020 through April 4, 2020 (weeks 06-20 through 14-20), the weeks at issue. The Department did not pay claimant benefits for the weeks at issue because it determined that claimant was not impacted by COVID-19 until April 5, 2020. Claimant also

claimed PUA benefits for a series of weeks beginning on or around April 5, 2020. The Department paid claimant benefits for these weeks, which are not at issue in this decision, because it determined that claimant had been impacted by COVID-19 as of the week of April 5, 2020 (week 15-20).

(2) On her initial application, claimant indicated that she was “impacted [by COVID-19] by [her] child’s school closure, and she listed that date as April 10, 2020.” Transcript at 18.

(3) During the period relevant to this decision, claimant lived with her 15-year-old child, who was enrolled at Willamette High School.

(4) Some time in February or March 2020, claimant was offered a job as a housekeeper at a residential care facility, which she accepted. Claimant was “laid off” due to circumstances relating to the COVID-19 pandemic. Transcript at 21.

(5) On March 12, 2020, the Governor of Oregon declared all public schools closed from March 16 through 31, 2020. On March 17, 2020, the Governor extended the school closure through at least April 28, 2020.¹ As a result of the school closure, claimant was required to stay home with her child, and therefore could not leave home to work.

(6) During the period relevant to this decision, claimant was not eligible for regular unemployment insurance (regular UI) benefits due to disqualifying separations from work.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits for weeks 06-20 through 11-20. Claimant was eligible for PUA benefits for weeks 12-20 through 14-20.

Under the CARES Act, 15 U.S.C. Chapter 116, to be eligible to receive PUA benefits, an individual must be a “covered individual” as that term is defined by the Act. 15 U.S.C. § 9021. In pertinent part, the Act defines a “covered individual” as an individual who “is not eligible for regular compensation or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 9025, including an individual who has exhausted all rights to regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 9025” and provides a self-certification that the individual “is otherwise able to work and available for work within the meaning of applicable State law,” but is rendered unemployed or unavailable to work because of one or more of 11 listed reasons that relate to the COVID-19 pandemic. 15 U.S.C. § 9021(a)(3)(A)(ii)(I). In pertinent part, those reasons include that the individual is unemployed or unavailable for work because a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work; and because the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency. 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(dd), (gg).

The order under review concluded that claimant “did not establish that [she] experienced the loss of employment or planned commencement of employment due to the novel coronavirus, or the loss or

¹ See Executive Order No. 20-08 (March 17, 2020).

diminution of self-employment or planned self-employment due to the novel coronavirus” Order No. 23-UI-221691 at 5. In so concluding, the order under review suggested that claimant had not shown that she was a covered individual during the weeks at issue because she provided conflicting and insufficient evidence regarding the job that she had planned to start around that time, and the requirement to stay home with her child due to school closures. Order No. 23-UI-221691 at 4, 5. The order under review is correct that the evidence in the record is insufficient to show that claimant was a covered individual under 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(gg) because claimant did not provide the date on which she either was offered the job that she had planned to commence, or the date on which the offer of employment was rescinded due to COVID-19. Nevertheless, the record supports a conclusion that claimant was a covered individual, and therefore eligible for PUA benefits, for some of the weeks at issue.

At hearing, claimant suggested that her child’s school closed sometime in mid-February 2020, apparently offering this testimony based on an unnamed and unverified website. Transcript at 29. Claimant disconnected from the hearing call before providing any further specifics on this point. Transcript at 29–30. Because the record does not contain sufficient evidence to show that claimant’s child’s school actually closed in February 2020, claimant has not met her burden to show that she was a covered individual under the CARES Act at that point in time.² However, despite claimant’s indication on her initial application that her child’s school closed on April 10, 2020, the record shows that, more likely than not, the school actually closed no later than March 16, 2020. As noted above, the Governor ordered public schools closed from March 16 through April 28, 2020. Because it is highly unlikely that claimant’s child’s school remained open for several weeks after the school-closure order was issued, in direct defiance of the Governor’s order, claimant’s report on her initial application that the school closed on April 10, 2020 was likely an error. As such, it is reasonable to conclude that claimant became unemployed or unavailable for work due to her needing to stay home with her child as of March 16, 2020. Claimant therefore was a covered individual as of that date.

For the above reasons, claimant was eligible for PUA benefits from March 15 through April 4, 2020 (weeks 12-20 through 14-20), but has not shown that she was eligible for PUA benefits for weeks claimed prior to week 12-20.

DECISION: Order No. 23-UI-221691 is modified, as outlined above.

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

DATE of Service: June 1, 2023

NOTE: This decision modifies 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

² *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).

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

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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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