

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0683

Affirmed
Ineligible for PUA Weeks 16-20 through 12-21 and 30-21 through 35-21

PROCEDURAL HISTORY: On September 20, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective April 12, 2020. Claimant filed a timely request for hearing. On June 5, 2023, ALJ Taylor conducted a hearing, and on June 13, 2023 issued Order No. 23-UI-227670, affirming the September 20, 2021 PUA determination. On June 16, 2023, claimant filed an application for review with the Employment Appeals Board (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. Claimant asserted that the circumstance that prevented him from offering the new information at hearing was that he "was unaware of the reason why [his] claim was being denied." Claimant's Written Argument at 1. Claimant offered the new evidence to show that he worked for Portland Public Schools rather than Multnomah County School District. Claimant's Written Argument at 1. However, claimant testified at hearing about the uncertainty over which employer he worked for, and as explained below, the distinction between the two districts is not relevant to claimant's PUA eligibility. Audio Record at 18:50 to 19:15. Accordingly, he was not prevented from offering information on this issue at hearing, and the proposed new information would not affect EAB's decision. 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 hearing record.

FINDINGS OF FACT: (1) On April 9, 2019, claimant separated from employment with Portland Public Schools. The Department issued an administrative decision concluding that claimant voluntarily quit working for the employer without good cause. Earnings from this position may have been reported to the Department as coming from Multnomah County School District, which apparently was involved in administering the payroll for claimant's position.

(2) From April 10, 2019 through September 4, 2021, claimant was not employed. Claimant was seeking employment but received no offers of employment during this time.

(3) On August 26, 2020, claimant filed an initial claim for PUA benefits.¹ The Department determined claimant was monetarily eligible for regular unemployment insurance (regular UI) benefits, but was disqualified from receiving regular UI benefits due to the April 9, 2019 work separation.² The Department determined the PUA claim was valid and backdated it to April 12, 2020. Claimant was paid PUA benefits for the weeks of April 12, 2020 through March 27, 2021 (weeks 16-20 through 12-21) and July 25, 2021 through September 4, 2021 (weeks 30-21 through 35-21). These are the weeks at issue.

(4) On his August 26, 2020 initial claim for PUA benefits, claimant self-certified that “his place of employment closed” as a direct result of the COVID-19 public health emergency. Audio Record at 15:40 to 16:02.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits for the weeks of April 12, 2020 through March 27, 2021 (weeks 16-20 through 12-21) and July 25, 2021 through September 4, 2021 (weeks 30-21 through 35-21).

Where the Department has paid benefits, it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department paid claimant benefits for the weeks at issue, and therefore had the burden of proving claimant should not have been paid benefits for those weeks.

To be eligible for PUA benefits, an individual must be a “covered individual” as that term is defined by the CARES Act, as amended. 15 U.S.C. § 9021(b). In pertinent part, a “covered individual” is an individual who (1) “is not eligible for regular compensation or extended benefits . . . or pandemic emergency unemployment compensation” 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.³ 15 U.S.C. § 9021(a)(3)(A)(i)-(ii).

Claimant did not constitute a “covered individual” entitled to PUA benefits. Although claimant met the first element of PUA eligibility because he was not eligible for regular unemployment insurance, extended benefits, or PEUC during the weeks at issue, he nevertheless did not constitute a “covered

¹ The Department’s representative testified that claimant filed two PUA applications that day, but that they contained the same information. Audio Record at 15:40 to 15:45.

² This disqualification would also have extended to the receipt of extended benefits (EB) or Pandemic Emergency Unemployment Compensation (PEUC) benefits, which are potentially available to claimants who have exhausted or expired regular UI claims.

³ There is a third element of “covered individual” status, added to the Act via the Continued Assistance for Unemployed Workers Act of 2020, enacted on December 27, 2020. The third element requires certain claimants to provide documentation substantiating their employment or self-employment within a required timeframe. 15 U.S.C. § 9021(a)(3)(A)(iii). This decision does not reach the substantiation element because the decision concludes that claimant was ineligible for PUA for failure to meet a COVID-19 qualifying reason. States have an independent authority to request supporting documentation for fraud prevention, which is separate from the substantiation requirement. 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-9.

individual” because his circumstances did not satisfy any of the COVID-19 qualifying reasons enumerated under 15 U.S.C. § 9021(a)(3)(A)(ii)(I).

Claimant self-certified that he was eligible for PUA benefits because he was unemployed, partially unemployed, or unable or unavailable to work because of the following circumstances recognized by the CARES Act:

* * *

(jj) the individual’s place of employment is closed as a direct result of the COVID-19 public health emergency;

* * *

Claimant testified that he had not worked or received an offer of employment after the April 9, 2019 work separation and through the weeks at issue. Audio Record at 18:08 to 18:28; 21:08 to 21:35. While claimant’s *former* place of employment likely was closed during some of the weeks at issue as a direct result of the COVID-19 public health emergency because it was a school, claimant had not worked there, or anywhere, since April 9, 2019.⁴ Therefore, when the COVID-19 public health emergency began in early 2020, claimant had no “place of employment.” Accordingly, he was not a “covered individual” under item (jj).

Claimant asserted at hearing and in his written argument that he should be eligible for PUA benefits because he could not find work due to business closures and stay-at-home orders effective during the COVID-19 pandemic. Audio Record at 19:28 to 16:50; Claimant’s Written Argument at 3. This is not sufficient to establish eligibility for PUA. Under federal guidance, “[a]n individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. *Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.*” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020), at I-6 (emphasis added).

For these reasons, claimant was not a “covered individual” within the meaning of the CARES Act, and therefore was not eligible for PUA benefits for the weeks of April 12, 2020 through March 27, 2021 (weeks 16-20 through 12-21) and July 25, 2021 through September 4, 2021 (weeks 30-21 through 35-21).

DECISION: Order No. 23-UI-227670 is affirmed.

⁴ Whether claimant’s employer until April 9, 2019 was Portland Public Schools or Multnomah County School District is not relevant to claimant’s PUA eligibility. The record suggests that the Department may have failed to immediately detect that claimant’s last employment was in April 2019 with one of those districts, and that he therefore was ineligible for PUA benefits when processing his initial PUA application, due to confusion over whether claimant subsequently worked for the other district after the April 9, 2019 work separation. Audio Record at 10:00 to 10:35. This confusion appeared to be the result of the two districts sharing payroll administration for purposes of reporting employment information to the Department.

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

DATE of Service: July 27, 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

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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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