

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0775

Affirmed
Ineligible for Pandemic Unemployment Assistance
Weeks 13-20 through 23-21, 25-21, and 27-21 through 35-21

PROCEDURAL HISTORY: On July 19, 2021, the Oregon Employment Department (the Department) served a notice a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective March 8, 2020. Claimant filed a timely request for hearing. On June 13, 2023, ALJ Taylor conducted a hearing, and on June 22, 2023 issued Order No. 23-UI-228392, modifying the July 19, 2021 PUA determination by concluding that claimant was not eligible to receive PUA benefits for the weeks including March 22, 2020 through June 12, 2021 (weeks 13-20 through 23-21), June 20, 2021 through June 26, 2021 (week 25-21), and July 4, 2021 through September 4, 2021 (weeks 27-21 through 35-21). On July 12, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Prior to March 2020, claimant collected discarded aluminum cans and glass bottles and redeemed them for their refund value based on the per-item deposit assigned to the items when they were sold to customers in stores. Following the onset of the COVID-19 pandemic, the government imposed safety restrictions that had the effect of closing the redemption centers claimant used to redeem the items. As a result, claimant was not able to redeem the discarded cans and bottles he collected for their refund value.

(2) On March 10, 2020, claimant's sister became ill with COVID-19. From that time until the end of July 2020, claimant's sister quarantined and claimant did all of the sister's shopping, errands, and house cleaning.

(3) On April 24, 2020, claimant filed an initial application for PUA benefits. On August 13, 2020, claimant filed another initial application for PUA benefits. The Department determined claimant was not eligible for regular unemployment insurance, extended benefits, or Pandemic Emergency Unemployment Compensation benefits. Claimant claimed PUA benefits for the weeks including March 22, 2020 through June 12, 2021 (weeks 13-20 through 23-21), June 20, 2021 through June 26, 2021

(week 25-21), and July 4, 2021 through September 4, 2021 (weeks 27-21 through 35-21). These are the weeks at issue.

(4) The Department paid claimant PUA benefits for weeks 13-20 through 22-20 and 30-20 through 07-21. The Department did not pay claimant PUA benefits for weeks 23-20 through 29-20, 08-21 through 23-21, 25-21, and 27-21 through 35-21.¹

(5) On February 24, 2021, the Department reviewed claimant's PUA claim and determined he was not eligible for PUA benefits. On February 25, 2021, the Department served a Notice of Determination for Pandemic Unemployment Assistance concluding that claimant was not entitled to receive PUA benefits effective March 8, 2020. Claimant filed a timely request for hearing. On April 13, 2021, ALJ Scott conducted a hearing, and on April 15, 2021 issued Order No. 21-UI-164881, affirming the February 25, 2021 PUA determination by concluding that claimant was not eligible to receive PUA benefits for the weeks including March 22, 2020 through April 3, 2021 (weeks 13-20 through 13-21). On May 3, 2021, claimant filed an application for review with EAB, and on June 10, 2021, EAB issued EAB Decision 2021-EAB-0355, affirming Order No. 21-UI-164881.

(6) On April 19, 2021, claimant submitted to the Department a statement offered to substantiate that claimant's activities redeeming cans and bottles for their refund value was self-employment. The statement was not notarized, was authored by claimant himself, and argued that claimant's redemption activities should be considered self-employment. Claimant later submitted this statement as his written argument to EAB in his appeal of Order No. 21-UI-164881.

(7) April 23, 2021, claimant submitted to the Department an Internal Revenue Service (IRS) tax return transcript for 2019, offered to substantiate that claimant's activities redeeming cans and bottles for their refund value was self-employment. The transcript showed that claimant earned zero income in 2019 except for \$1 in taxable interest income. Claimant failed to submit any documentation that showed income from self-employment, such as an IRS Schedule C or a profit-and-loss statement.

(8) The Department reviewed claimant's April 19 and April 23, 2021 submissions and concluded that they were insufficient to substantiate self-employment. On July 19, 2021, the Department issued the July 19, 2021 PUA determination in this case concluding that claimant was not eligible to receive PUA benefits effective March 8, 2020.

CONCLUSIONS AND REASONS: Claimant was not eligible to receive PUA benefits for the weeks including March 22, 2020 through June 12, 2021 (weeks 13-20 through 23-21), June 20, 2021 through June 26, 2021 (week 25-21), and July 4, 2021 through September 4, 2021 (weeks 27-21 through 35-21).

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

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.

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)(i)-(ii).

One of the enumerated COVID-19 related reasons is that “the individual meets any additional criteria established by the [United States] Secretary [of Labor] for unemployment assistance under this section.” 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk). A circumstance approved via the Secretary’s item (kk) authority is for “self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) at 2. This is the COVID-19 related circumstance that is potentially applicable to claimant’s activities redeeming cans and bottles for their refund value.

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). 20 C.F.R. 625.2(o) defines “self-employment” as “services performed as a self-employed individual.” 20 C.F.R. 625.2(n) defines “self-employed individual” as “an individual whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm.”

As a preliminary matter, the issue of whether claimant’s activities redeeming cans and bottles for their refund value constituted self-employment was decided in EAB Decision 2021-EAB-0355. That decision concluded that claimant was not eligible for PUA because claimant’s activities did not constitute “services performed as a self-employed individual” as is required to meet the definition of “self-employment” set forth by 20 C.F.R. 625.2(o). Transcript at 8.

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

With respect to claimant’s activities redeeming cans and bottles for their refund value, claimant did not establish under item (kk) that he was a self-employed individual who experienced a significant diminution of services because of the COVID-19 public health emergency. Claimant’s activities did not meet the 20 C.F.R. Section 625.2(n) definition of “self-employed individual” because claimant did not show his activities amounted to “the performance of services” as part of his “own business or farm” as required by the regulation.

Redeeming discarded bottles and cans is an activity that generates some income. However, it is not evident that redeeming the discarded items for their refund value based on the deposit amounts assigned to them when sold in stores constituted “the performance of services.” As such a process would involve redeeming items for their refund value, it is not clear that claimant would have performed a recycling service for any customer or client but instead would simply have received the refund value that the original purchasers were entitled to had they redeemed the items themselves.

Further, the record does not indicate that redeeming the items was an activity claimant engaged in as part of his “own business or farm.” Claimant’s redemption activities had nothing to do with any farm, and lacked the characteristics of a business. The record fails to show, for example, that claimant had prepared a business plan in connection with his redemption of bottles and cans, engaged in any advertising or marketing of such activities, or that he had formed and registered with the Oregon Secretary of State a business entity to carry out the activities. There is also no indication that claimant had ever paid any taxes that are typically assessed against businesses or that he had ever filed any tax return in which he represented to the taxing authority that his redemption of cans was a business. Indeed, the IRS transcript claimant submitted to the Department showed only \$1 of income, which was attributed to taxable interest, not to income from self-employment.

Thus, the record does not show that claimant was self-employed with respect to bottle and can redemption, and therefore does not establish that he was a self-employed individual who experienced a significant diminution of services because of the COVID-19 public health emergency per 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk) and federal guidance. Because claimant did not meet 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk), he was not a “covered individual” within the meaning of the CARES Act, and therefore was not eligible to receive PUA benefits for the weeks at issue.

As it relates to claimant’s activities helping his sister while she was ill with COVID-19, the COVID-19 related circumstances recognized by the CARES Act that are potentially applicable include the following:

- (bb) a member of the individual's household has been diagnosed with COVID-19;
- (cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19[.]

It is undisputed that claimant’s sister became ill with COVID-19 on March 10, 2020 and that from then through July 2020, claimant did all of his sister’s shopping, errands, and house cleaning. However, as the above discussion of claimant’s bottle and can redemption activities shows, claimant was not actually self-employed when his sister got sick with COVID-19 on March 10, 2020. Therefore, the circumstances listed in items (bb) and (cc) did not render claimant unemployed, partially unemployed, or unable or unavailable to work as to any self-employment per 15 U.S.C. § 9021(a)(3)(A)(ii)(II), because claimant did not actually have any self-employment that could be impacted by COVID-19. Thus, while COVID-19 may have impacted claimant in the sense that it caused him to have to help his sister, the helping of claimant’s sister did not impact claimant’s self-employment status because claimant was not self-employed in the first place. Accordingly, claimant did not meet the requirements of 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(bb) or (cc), and therefore was not a “covered individual” within the meaning of the CARES Act under either of those provisions. As such, claimant was not eligible to receive PUA benefits for the weeks at issue.

Moreover, as to weeks 53-20 through 23-21, 25-21, 27-21 through 35-21, claimant was also ineligible to receive PUA benefits for an additional reason. 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 claimants with an existing PUA claim as of December 27, 2020 and who receive PUA benefits on or after December 27, 2020, to provide documentation

substantiating their employment or self-employment. 15 U.S.C. § 9021(a)(3)(A)(iii). Documentation sufficient to substantiate self-employment includes, but is not limited to, “state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual’s self-employment.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4, January 8, 2021 (UIPL Change 4) at I-10. Failure to provide sufficient substantiating documentation results in ineligibility for PUA for weeks beginning on or after December 27, 2020. UIPL 16-20, Change 4 at I-11 (“[I]f the individual fails to submit such documentation, the state may only establish an overpayment for those weeks of unemployment ending on or after December 27, 2020 (the enactment date of the Continued Assistance Act)”). States have discretion to determine if the documentation an individual submits substantiates an individual’s self-employment. UIPL 16-20, Change 4 at I-11.

The Department concluded that claimant’s April 19 and April 23, 2021 submissions were insufficient to substantiate self-employment. The record supports this conclusion. Claimant’s April 19, 2021 statement was not a signed affidavit from a third party verifying claimant’s self-employment, but was instead an un-notarized statement which claimant drafted himself. Likewise, claimant’s April 23, 2021 submission, an IRS tax return transcript, showed that claimant earned zero income in 2019 except for \$1 in taxable interest income, thereby failing to show that claimant actually had any self-employment income during that tax year. The Department exercised its discretion reasonably in deeming these submissions as insufficient to substantiate self-employment. Accordingly, claimant did not fulfill the substantiation requirement, and was not eligible to receive PUA benefits on that basis for weeks 53-20 through 23-21, 25-21, 27-21 through 35-21.

For the reasons outlined above, claimant was not eligible to receive PUA benefits for the weeks at issue, the weeks including March 22, 2020 through June 12, 2021 (weeks 13-20 through 23-21), June 20, 2021 through June 26, 2021 (week 25-21), and July 4, 2021 through September 4, 2021 (weeks 27-21 through 35-21).

DECISION: Order No. 23-UI-228392 is affirmed.

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

DATE of Service: August 25, 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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