

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0091

Affirmed
Not Eligible for PUA Weeks 12-20 through 20-21

PROCEDURAL HISTORY: On April 5, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective February 2, 2020. Claimant filed a timely request for hearing. On December 28, 2023, ALJ Enyinnaya conducted a hearing, and on January 5, 2024, issued Order No. 24-UI-244857, affirming the April 5, 2022, PUA determination. On January 21, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) From 2016 until November 2018, claimant worked framing houses for an employer, Hypotenuse Works. Exhibit 1 at 137. After that employment ended, claimant did some "small jobs" doing carpentry and general construction and then underwent hip replacement surgery in August 2019. Exhibit 1 at 151. Claimant was in recovery from the surgery for a number of weeks. For most of December 2019, claimant's romantic partner was hospitalized with a severe illness that was not COVID-19. During that time period, claimant spent most of his time in the hospital with his partner. Claimant's partner was released from the hospital in late December 2019 and, thereafter, suffered from a compromised immune system and was bound to the home she and claimant shared.

(2) Following claimant's partner's release from the hospital, the partner had no income and the two found themselves "in dire straits" financially. Transcript at 11. Claimant sold some of his possessions and received gifts from friends and family members to help address their financial difficulty during this time.

(3) In December 2019 or January 2020, claimant began performing some carpentry and general construction services for pay. Claimant provided the services he offered to "friends that needed help" and did not advertise. Transcript at 24. Claimant did not have a business name or business card for the general construction services he provided. Claimant did not file any tax returns intended for use by businesses, like a Schedule C, in connection with the general construction services he provided.

Claimant did not have a license from the Oregon Construction Contractors Board (CCB) to work as a construction contractor in Oregon. Transcript at 9.

(4) On June 22, 2020, claimant filed an initial application for PUA benefits with the Department. Claimant filed additional PUA initial applications on October 27, 2020, and March 19, 2021. Claimant claimed PUA benefits for the weeks from March 15, 2020, through May 22, 2021 (weeks 12-20 through 20-21). These are the weeks at issue. The Department paid claimant PUA benefits for each of the weeks at issue.

(5) Claimant was not eligible for regular unemployment insurance (regular UI), extended benefits, or pandemic emergency unemployment compensation (PEUC) during the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits from March 15, 2020, through May 22, 2021 (weeks 12-20 through 20-21).

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 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 eleven 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 qualifying reason potentially applicable to claimant’s circumstances. 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. Section 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.”

Claimant was not 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 UI, extended benefits, or PEUC 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)(I). Specifically, as to 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk), because claimant did not meet the 20 C.F.R. Section 625.2(n) definition of a “self-employed individual”, the record fails to show that claimant was a self-employed individual who experienced a significant diminution of services because of the COVID-19 public health emergency.

The record shows that claimant's carpentry and general construction activities likely were not services that claimant performed in the context of his "own business" or his "own farm" per 20 C.F.R. Section 625.2(n). Claimant did not provide the general construction services in connection with any farm that he owned. In addition, claimant's general construction activities lacked the characteristics of a business.

First, at hearing, claimant testified that he provided the services he offered to "friends that needed help" and that he did not advertise. Transcript at 24, 17. A business concern will typically transact business with its customers at arm's length, meaning the transactions occur between two unaffiliated parties each acting in their own self-interest. The fact that the individuals for whom claimant provided services were friends raises some doubt that the transactions between claimant and those individuals were arm's length transactions. Similarly, because businesses typically engage in active marketing efforts to obtain customers, the fact that claimant did not advertise his activities weighs against concluding that his construction activities amounted to a business.

Furthermore, claimant did not file any tax returns intended for use by businesses, like a Schedule C, in connection with the general construction services he provided. Nor did claimant have a business name or business card for the general construction services he provided, which suggests that during the weeks at issue, his activities were not registered as a business entity with the Oregon Secretary of State. That claimant did not file a business tax return, did not have a business name, and likely did not organize as a business entity with the Secretary of State suggests that claimant's activities lacked the characteristics of a business.

Finally, claimant did not have a license from the CCB to perform construction contractor work in Oregon.¹ Claimant testified at hearing that he recognized he could not "be hired as a subcontractor" due to his lack of a CCB license, so he took only "odd jobs" or "side gigs" that he believed did not require a CCB license to lawfully perform. Transcript at 25. It is more likely than not that at least some of the construction services claimant provided during the weeks at issue required a CCB license. The record suggests that CCB licensing extends to construction work that is modest in scope. According to a CCB pamphlet included as part of Exhibit 1, "Virtually anyone who performs home improvements for a seller or buyer will need to have a CCB license." Exhibit 1 at 12. At times during the hearing, claimant characterized his activities as "handyman stuff[.]" See transcript at 24. However, the CCB pamphlet further states, "Oregon rules make it very difficult to work as a handyman without a CCB license. Any handyman that performs work valued at or above \$1,000 must be licensed by the CCB." Exhibit 1 at 12. At hearing, claimant testified to earning more than \$1,000 for a March 31, 2020, job tearing up linoleum, a May 18, 2020, job doing trim and replacing a door, and a December 3, 2020, job doing stucco work. Transcript at 15-17; *see also* Exhibit 1 at 15, 20, 25. Although claimant's lack of a CCB license is not a conclusive factor, that fact that claimant did not hold a license necessary to lawfully perform at least some of the work he did during the weeks at issue tends to reinforce that claimant's activities lacked the characteristics of a business.

While no single one of the points raised above is dispositive, when considered collectively, they show that claimant's activities likely did not amount to the performance of services in his "own business." Thus, the record shows that claimant likely was not a "self-employed individual" within the meaning of 20 C.F.R. Section 625.2(n). The record therefore establishes that he likely was not a self-employed

¹ After the weeks at issue, on January 27, 2022, claimant obtained a CCB license. Exhibit 1 at 10.

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.

Moreover, even if the record showed that claimant was a “self-employed individual” within the meaning of 20 C.F.R. Section 625.2(n), comparing the evidence of payments claimant received for his activities prior to the first week at issue, the week beginning March 15, 2020, versus payments received thereafter, it is not evident that claimant experienced a significant diminution in services. The record shows that in December 2019 and January 2020, claimant received \$2,500 from family members of claimant and claimant’s partner. Exhibit 1 at 44, 46. More likely than not, as claimant referenced at hearing, these were gifts made to ease the financial distress claimant and his partner were experiencing during the partner’s December 2019 hospitalization. Transcript at 11. Otherwise, the record shows claimant received checks and made cash deposits between mid-January 2020 and March 11, 2020, totaling \$3,232. Exhibit 1 at 49, 55, 57, 65, and 66. At least some of these payments were in exchange for services claimant performed, as certain of the checks indicate “Hauling Services” or “Roof Pressure Washing.” See Exhibit 1 at 55, 65. However, even if the entire \$3,232 figure from mid-January 2020 through March 11, 2020, related to money claimant received for performing construction services, that figure is less than the combined \$3,975 claimant received for the March 31, 2020, job tearing up linoleum (\$1,095) and the May 18, 2020, job doing trim and replacing a door (\$2,880). Transcript at 15-16; Exhibit 1 at 15, 20. Although the available financial data is limited, the record shows that claimant likely received more money in exchange for performing services after he began claiming PUA benefits, which shows that he likely did not experience a significant diminution of services because of the COVID-19 public health emergency.

Lastly, in his written argument, claimant referenced a different COVID-19 qualifying reason that he suggested was applicable to him. Written Argument at 1. Specifically, under 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(hh), a COVID-19 related circumstance recognized by the CARES Act is the following:

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19[.]

This qualifying reason is not applicable to claimant. While claimant may have become the major support for the household he shared with his partner following his partner’s December 2019 hospitalization, claimant’s partner did not die as a direct result of COVID-19. Accordingly, 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(hh) does not apply to claimant.

For the above reasons, claimant did not meet 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk) or (hh). Claimant therefore was not a “covered individual” within the meaning of the CARES Act, and thus was not eligible for PUA benefits for the weeks at issue, weeks 12-20 through 20-21.

Note that on May 13, 2022, the Department also issued a separate administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits in connection with the PUA benefits he received for the weeks at issue, and assessing an overpayment and penalties that claimant was required to repay. Exhibit 1 at 4-9. Claimant timely requested a hearing on the May 13, 2022, overpayment administrative decision. Claimant may wish to contact the Office of Administrative Hearings (OAH) to check whether a hearing has been scheduled in that case.

DECISION: Order No. 24-UI-244857 is affirmed.

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

DATE of Service: March 5, 2024

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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