

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0196**

*Ineligible for Pandemic Unemployment Assistance*

**PROCEDURAL HISTORY:** On January 28, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA effective March 29, 2020. Claimant filed a timely request for hearing. On March 9, 2021, ALJ Wyatt conducted a hearing, and on March 11, 2021 issued Order No. 21-UI-162532, affirming the January 28, 2021 administrative decision, and concluding that claimant was not entitled to receive PUA benefits for the weeks including March 29, 2020 through August 1, 2020 (weeks 14-20 through 31-20). On March 17, 2021, 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. 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 record.

**FINDINGS OF FACT:** (1) Claimant was an American citizen who had resided in Australia since 2009.

(2) Claimant worked as a civil engineer in Australia. Following the onset of the COVID-19 pandemic, claimant's work in Australia was "basically shut down[.]" Transcript at 10.

(3) After claimant's work was shut down, claimant filed an initial claim for PUA benefits in Oregon. Claimant claimed PUA benefits for the weeks of March 29, 2020 through August 1, 2020 (weeks 14-20 through 31-20). The Department did not pay claimant benefits, and on January 28, 2021 served the administrative decision concluding that claimant was not entitled to PUA.

**CONCLUSIONS AND REASONS:** Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for weeks 14-20 through 31-20.

Under the CARES Act Pub. L. 116-136, to be eligible to receive PUA benefits, an individual must be a “covered individual” as that term is defined by the Act. Pub. L. 116-136, § 2102(b). In pertinent part, the Act defines a “covered individual” as an individual who is not eligible for other types of unemployment benefits 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. Pub. L. 116-136, § 2102(a)(3)(A)(i)-(ii). Thus, if an individual is not available for work because of a reason listed under Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA. However, if an individual is not available for work by operation of applicable state law, the individual is not a “covered individual” under the Act and is therefore not eligible for PUA. *See* April 27, 2020 U.S. Dep’t of Labor UI Program Letter at 12 (“Eligibility for PUA requires that the individual be able to work and available to work within the meaning of applicable state law, unless the individual is unable or unavailable . . . because of a reason listed under section 2101(a)(3)(A)(ii)(I) of the CARES Act, he or she would not be eligible for PUA.”).

Under applicable Oregon law, an individual is not considered “available for work” in any week in which the individual resided outside of the United States<sup>1</sup> unless the individual resided: (1) in Canada and was authorized to work in Canada, or (2) in a country included in the Compact of Free Association with the United States of America.<sup>2</sup> OAR 471-030-0036(3)(i)(C)-(E) (December 8, 2019).

Here, claimant had resided in Australia since 2009. Australia is outside of the United States and is not Canada or a country included in the Compact of Free Association with the United States of America. Because claimant was outside of the United States in Australia during the weeks he claimed PUA benefits, he was not available for work during those weeks by operation of OAR 471-030-0036(3)(i)(C)-(E). This means that claimant was not available for work within the meaning of applicable state law, and therefore did not constitute a “covered individual” for purposes of Section 2102(a)(3) of the CARES Act. As a result, claimant was not eligible to receive PUA benefits.

For these reasons, claimant was not entitled to receive PUA benefits for weeks 14-20 through 31-20.

**DECISION:** Order No. 21-UI-162532 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** April 23, 2021

**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](http://courts.oregon.gov). Once on the website, use the

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<sup>1</sup> The term “outside of the United States” means outside of the United States of America, the District of Columbia or any territory or political division that is directly overseen by the United States federal government. OAR 471-030-0036(3)(i)(E) (December 8, 2019).

<sup>2</sup> The countries included in the Compact of Free Association with the United States of America are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *See* 48 U.S.C. §§ 1901-1973.

'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 desisyong ito.

## 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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