

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0229-R**

*Affirmed*

*Ineligible for Pandemic Unemployment Assistance Weeks 14-20 through 09-21*

**PROCEDURAL HISTORY:** On October 16, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective February 3, 2020. Claimant filed a timely request for hearing. On March 12, 2021, ALJ Meerdink conducted a hearing and issued Order No. 21-UI-162601, affirming the October 16, 2020 administrative decision. On March 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB). On May 6, 2021, EAB issued EAB Decision 2021-EAB-0229, affirming Order No. 21-UI-162601. On May 10, 2021, claimant filed a petition for review of EAB Decision 2021-EAB-0229 with the Oregon Court of Appeals. On July 6, 2021, the Department filed the agency record with the Oregon Court of Appeals. On July 21, 2021, claimant filed a motion to correct the record with the Oregon Court of Appeals. On September 7, 2021, the Department filed a response to claimant's motion to correct the record with the Oregon Court of Appeals. On September 15, 2021, claimant filed a reply to the Department's response to claimant's motion to correct the record in which claimant withdrew her motion to correct the record. On November 23, 2021, claimant filed an opening brief with the Oregon Court of Appeals. On February 18, 2022, EAB filed a notice of withdrawal of order for purposes of reconsideration pursuant to ORS 183.482(6) and ORAP 4.35.

**WRITTEN ARGUMENT:** Claimant filed written arguments on April 21, 2021 and February 26, 2022. EAB considered claimant's arguments to the extent they were based on the record. In her April 20, 2021 written argument, claimant asserted that the hearing proceedings did not show a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) On March 29, 2020, claimant filed an initial claim for benefits under the regular unemployment insurance program (Regular UI). The Department determined that the amount of base year wages paid to claimant was sufficient to qualify her for Regular UI benefits. Exhibit 1 at 15, Wage and Potential Benefit Report. The Department determined that claimant's weekly benefit amount

was \$172, that the maximum amount payable under the claim was \$4,472, and that her claim had a benefit year expiration date effective the end of the week of March 28, 2021 through April 3, 2021 (week 13-21). Exhibit 1 at 15, Wage and Potential Benefit Report.

(2) Claimant claimed benefits under her Regular UI claim for the week of March 29, 2020 through April 4, 2020 (week 14-20), and each of the weeks from April 12, 2020 through May 9, 2020 (weeks 16-20 through 19-20). However, claimant had a part-time job, and for each of the weeks claimant claimed Regular UI benefits, she reported earnings that exceeded her weekly benefit amount. As a result, the Department deemed claimant ineligible to receive benefits with respect to each of those weeks and did not pay claimant benefits.

(3) On or soon after March 29, 2020, claimant filed an initial claim for benefits under the PUA program. Claimant claimed benefits under her PUA claim for each of the weeks of March 29, 2020 through March 6, 2021 (weeks 14-20 through 09-21), the weeks at issue. However, for each of the weeks claimant claimed PUA benefits, claimant was eligible to receive Regular UI, and her rights to her Regular UI claim were not exhausted. As a result, the Department deemed claimant not entitled to receive PUA, and did not pay claimant PUA benefits.

**CONCLUSIONS AND REASONS:** Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for weeks 14-20 through 09-21.

Claimant did not receive PUA benefits for the weeks at issue and, therefore, claimant had the burden to prove that she should have been paid benefits for those weeks. *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).

Under the CARES Act Pub. L. 116-136, to be entitled 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). The Act defines a “covered individual” as an individual who (1) “is not eligible for regular compensation . . . under State or Federal law . . . including an individual who has exhausted all rights to regular unemployment . . . under State or Federal law” 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 or unavailable to work because of one of the eleven listed reasons. Pub. L. 116-136, § 2102(a)(3)(A).

Section 2102(h) of the Act provides that regulations at 20 C.F.R. part 625 apply to the PUA program, *unless* otherwise provided or contrary to Section 2102. Applying the regulations is mandatory, except as otherwise provided by Section 2102 or in the event of a conflict between the statute and the regulations, because the plain language of Section 2102(h) provides that the regulations “shall apply[.]” Section 2102(h) states that 20 C.F.R. part 625 applies to administration of the PUA program as if the term “COVID-19 public health emergency” were substituted for the term “major disaster” and as if the term “pandemic” were substituted for the term “disaster” each place that those terms appear in the regulations. So modified, 20 C.F.R. Section 625.4 provides that an “individual shall be eligible to

receive a payment of [Pandemic Unemployment Assistance] with respect to a week of unemployment . . . if: . . . [t]he individual is not eligible for compensation (as defined in § 625.2(d)) or for waiting period credit for such week under any other Federal or State law, *except* that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit.” 20 C.F.R. § 625.4(i) (emphasis added). 20 C.F.R. Section 625.2(d)(1) defines “compensation,” in pertinent part, as “compensation payable to an individual under any State law or unemployment compensation plan of a political subdivision of a State[.]” 20 C.F.R. § 625.4(i) further states that “[a]n individual shall be considered ineligible for compensation or waiting period credit (and thus potentially eligible for [Pandemic Unemployment Assistance]) if the individual is under a disqualification for a cause that occurred prior to the individual’s unemployment due to the [pandemic], or for any other reason is ineligible for compensation or waiting period credit as a direct result of the [COVID-19 public health emergency].”

Claimant was not entitled to receive PUA benefits during the weeks at issue because she was not a covered individual as defined by the Act. As to the first element, the record shows that claimant had not exhausted all rights to Regular UI during the weeks at issue. After claimant filed an initial claim for Regular UI benefits, the Department determined claimant qualified for a Regular UI claim and assigned claimant a weekly benefit amount of \$172. The Department established a maximum benefit amount payable under the claim of \$4,472, and determined that the claim would expire effective the end of the week of March 28, 2021 through April 3, 2021 (week 13-21). During the weeks at issue, while claimant was making weekly claims under the PUA program, claimant’s Regular UI claim was not exhausted because it had a maximum benefit amount ample to support multiple weeks of continuing claims, and had not expired. An individual’s earnings information is subject to change and is assessed with respect to each particular week claimed. The fact that claimant’s earnings were too high for her to be eligible to receive Regular UI benefits for the weeks that she claimed Regular UI did not operate to exhaust all of claimant’s rights to Regular UI. Because claimant had not exhausted all rights to her Regular UI claim during the weeks at issue, she did not meet the standard set forth by Section 2102(a)(3)(A)(i) of the CARES Act, and therefore was not a covered individual entitled to receive PUA benefits.

Also, as to the first element, the record shows that claimant did not constitute a covered individual because she was not ineligible for regular compensation. Claimant argued, in written argument to EAB and in her brief, that because she had a part-time job and reported earnings that exceeded her Regular UI weekly benefit amount, she was not an “unemployed individual”<sup>1</sup> during the weeks at issue and therefore was not eligible for regular compensation under State law for purposes of Section 2102 of the CARES Act. April 21, 2021 Written Argument at 1; Petitioner’s Brief at 6. However, under 20 C.F.R. Section 625.4(i), applicable to the administration of the PUA program via Section 2102(h) of the CARES Act, an individual is eligible to receive PUA if the individual is not eligible for regular unemployment compensation under State law, “*except* that an individual determined ineligible because of the receipt of disqualifying income shall be considered eligible for such compensation or waiting period credit.” 20 C.F.R. Section 625.4(i) (emphasis added). Thus, in this scenario, where claimant was determined to be ineligible to receive Regular UI benefits due to the receipt of disqualifying income, by operation of 20 C.F.R. Section 625.4(i), she continued to be considered eligible for such Regular UI compensation for purposes of determining eligibility to receive PUA benefits. Because claimant was

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<sup>1</sup> Under ORS 657.155(1), to receive Regular UI benefits “with respect to any week” a claimant must be an “unemployed individual.” A claimant is considered an unemployed individual “in any week of less than full-time work if the remuneration paid . . . for services performed during the week is less than the individual’s weekly benefit amount.” ORS 657.100(1).

considered eligible for Regular UI during the weeks at issue, she did not meet the standard set forth by Section 2102(a)(3)(A)(i) of the CARES Act and therefore was not a covered individual entitled to receive PUA benefits.

Finally, a contention claimant raised on appeal is that under Section 2102(a)(3)(A)(II), she was someone who “otherwise would not qualify for regular unemployment” and, as such, she constituted a covered individual because, claimant argued, “if a claimant has any lack of qualification whatsoever, or is subject to any disqualification whatsoever, that person is a [covered individual], provided . . . they are unemployed due to COVID-19.” Petitioner’s Brief at 15. Because the elements set forth under Section 2102(a)(3)(A) that define a covered individual are conjunctive, a claimant must meet both to be considered a covered individual entitled to receive PUA benefits. *See* Pub. L. 116-136, § 2102(a)(3)(A) (“The term ‘covered individual’ -- (A) means an individual who -- (i) is not eligible for regular compensation . . . ; and (ii) provides self-certification that the individual -- (I) is . . . unemployed . . . because [of one of eleven listed reasons]; or (II) is self-employed, . . . or otherwise would not qualify for regular unemployment . . . and meets the requirements of subclause (I)[.]”) (emphasis on the conjunction added). As the above analysis shows, claimant did not meet the first element set forth under Section 2102(a)(3)(A)(i), because she was considered eligible for Regular UI for purposes of the PUA program and her rights to her Regular UI claim were not exhausted during the weeks at issue. Claimant’s failure to meet the standard set forth under Section 2102(a)(3)(A)(i) is sufficient to conclude that claimant did not constitute a covered individual entitled to receive PUA benefits during the weeks at issue.

Nevertheless, it is not accurate to regard claimant as someone who “otherwise would not qualify for regular unemployment” as contemplated by Section 2102(a)(3)(A)(ii)(II). This is because, as mentioned above, the record shows that claimant had a valid Regular UI claim because the Department determined that the amount of base year wages paid to claimant was sufficient to qualify her for Regular UI benefits. Further, although claimant was ineligible to receive Regular UI benefits due to excess earnings, this was a type of ineligibility for which, under 20 C.F.R. Section 625.4(i), claimant continued to be considered eligible for Regular UI for purposes of PUA eligibility. Nor is it correct, as claimant argues, that “any lack of qualification whatsoever” for Regular UI makes a person a covered individual. By its terms, 20 C.F.R. Section 625.4(i) treats a person who is ineligible to receive unemployment compensation benefits due to receipt of disqualifying income as eligible for those benefits for the purpose of determining eligibility to receive PUA. Thus, by operation of 20 C.F.R. Section 625.4(i), which is applicable to the administration of the PUA program via Section 2102(h) of the CARES Act, to the extent a person has a “lack of qualification” for Regular UI because of receipt of disqualifying income—as is the case for claimant—their “lack of qualification” for Regular UI does not make them a covered individual entitled to receive PUA benefits.

For the reasons set forth above, claimant did not constitute a covered individual under Section 2102 of the CARES Act during the weeks at issue, and was therefore not entitled to receive PUA benefits for weeks 14-20 through 09-21.

**DECISION:** Order No. 21-UI-162601 is affirmed.

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

**DATE of Service: April 15, 2022**

**NOTE:** EAB's final order on reconsideration will be filed with the Oregon Court of Appeals as required by ORS 183.482 and ORAP 4.35.

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**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 الاستئناف 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.

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