

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0420**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 5, 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 benefits effective April 12, 2020. Claimant filed a timely request for hearing. On May 12, 2021, ALJ Frank conducted a hearing, and on May 13, 2021 issued Order No. 21-UI-166717, affirming the April 5, 2021 administrative decision and concluding that claimant was not eligible for PUA benefits for the weeks including May 3, 2020 through June 27, 2020 (weeks 19-20 through 26-20), August 16, 2020 through August 29, 2020 (weeks 34-20 through 35-20), and September 6, 2020 through May 1, 2021 (weeks 37-20 through 17-21). On May 27, 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 her 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.

Claimant may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) In 2018, claimant worked for Devils Lake Rock Company. In October 2018, claimant stopped working for Devils Lake Rock Company.

(2) In April or May of 2020, claimant was scheduled to return to work at Devils Lake Rock Company. When claimant called to confirm her return, "[she] was told that they no longer needed [her], due to they don't have any jobs." Transcript at 10.

(3) On August 20, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed benefits for the weeks including May 3, 2020 through June 27, 2020 (weeks 19-20 through 26-20), August 16, 2020 through August 29, 2020 (weeks 34-20 through 35-20), and September 6, 2020 through May 1, 2021 (weeks 37-20 through 17-21). These are the weeks at issue. The Department did not pay claimant benefits for any of the weeks at issue.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-166717 is set aside and this matter remanded for further development of the record.

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(a). In pertinent part, the Act defines a “covered individual” as an individual who “is not eligible for regular compensation or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107” and provides a self-certification that the individual “is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable 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). Those reasons include, in relevant part, that “the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency.” Pub. L. 116-136, § 2102(a)(3)(A)(ii)(I)(gg).

The order under review concluded that claimant was not eligible for PUA benefits because she did “not establish[] that her . . . situation met one of the[] criteria [set forth under § 2102(a)(3)(A)(ii)(I)(aa) through (kk)] during the periods at issue[.]” Order No. 21-UI-166717 at 3. The record as developed does not support this conclusion. Rather, the record suggests the possibility that, during the weeks at issue, claimant was scheduled to commence employment at Devils Lake Rock Company but did not have a job as a result of the COVID-19 public health emergency, which, if supported by the record on remand, would satisfy § 2102(a)(3)(A)(ii)(I)(gg).

On remand, the ALJ should ask questions to assess, on a week-by-week basis, whether, during the weeks at issue, claimant was able to work and available for work but was rendered unemployed, partially unemployed, or unavailable to work because of one or more of the reasons listed under § 2102(a)(3)(A)(ii)(I)(aa) through (kk). The ALJ should ask questions to assess the applicability of § 2102(a)(3)(A)(ii)(I)(gg), as well as the other reasons listed under § 2102(a)(3)(A)(ii)(I). As to § 2102(a)(3)(A)(ii)(I)(gg), the record should be developed to determine why claimant stopped working for Devils Lake Rock Company in October 2018, when precisely she was to return to work there, why Devils Lake Rock Company did not have a job for claimant at that time, and if the reason they did not have a job for claimant at that time was due to the COVID–19 public health emergency, whether claimant was otherwise able to work and available for work but for the COVID–19 public health emergency.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case.

ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was eligible for PUA benefits during the weeks at issue, Order No. 21-UI-166717 is reversed, and this matter is remanded.

**DECISION:** Order No. 21-UI-166717 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: July 1, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-166717 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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**

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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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