

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0476**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 9, 2021, 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 2, 2020. Claimant filed a timely request for hearing. On May 18, 2021, ALJ Frank conducted a hearing, and on May 26, 2021 issued Order No. 21-UI-167579, affirming the February 9, 2021 administrative decision and concluding that claimant was not eligible to receive PUA benefits for the weeks including March 8, 2020 through May 8, 2021 (weeks 11-20 through 18-21). On June 10, 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.

The parties may offer new information into evidence at the remand hearing, such as the affidavits claimant submitted with his written argument, as well as any state or federal employer identification numbers, business licenses, business plans, tax returns, or business receipts that may substantiate whether claimant was self-employed during the weeks at issue. 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) Prior to the onset of the COVID-19 pandemic, claimant had a regular practice of approaching businesses, like body shops, and asking to take their scrap metal. Claimant also picked up roadside scrap metal. After collecting scrap metal in this way, claimant took the scrap to recycling centers and redeemed it for money. Claimant also collected discarded bottles and cans and redeemed them for their deposit value.

(2) Claimant did not carry on his scrap metal or discarded bottle and can collection activities as part of a business registered under any regulatory authority.

(3) After restrictions were imposed to combat the spread of COVID-19, claimant was unable to approach businesses to ask for their scrap metal because the businesses were closed. Claimant also was unable to meet “face-to-face” with “the people that . . . would . . . save . . . scrap metal.” Transcript at 13. This caused claimant to lose income.

(4) On November 6, 2020, claimant filed an initial claim for PUA benefits. Claimant claimed PUA benefits for the weeks including March 8, 2020 through July 11, 2020 (weeks 11-20 through 28-20) and for the weeks including July 19, 2020 through May 8, 2021 (weeks 30-20 through 18-21). These are the weeks at issue. The Department did not pay claimant PUA benefits for any of the weeks at issue.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-167579 is set aside and this matter is 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. § 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,” but is rendered unemployed or unavailable to work because of one or more of 11 listed reasons that relate to the COVID-19 pandemic.<sup>1</sup> § 2102(a)(3)(A). Those reasons include, in relevant part, that “the individual meets any additional criteria established by the Secretary [of Labor] for unemployment assistance under this section.” § 2102(a)(3)(A)(ii)(I)(kk). Pursuant to federal guidance, “the Secretary provides coverage under item (kk) to those 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.

An individual may also meet the definition of a “covered individual” if they self-certify that they are self-employed, seeking part-time employment, lack sufficient work history, or otherwise would not qualify for regular unemployment, extended benefits, or pandemic emergency unemployment compensation, so long as they otherwise satisfy the requirements set forth under section 2102(a)(3)(A)(ii)(I) of the Act. § 2102(a)(3)(A)(ii)(II). Section 2102(h) of the Act provides that regulations at 20 C.F.R. Part 625 apply to the PUA program, unless otherwise stated or contrary to the Act. 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

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<sup>1</sup> In addition, section 2102(a)(3)(A)(iii) of the CARES Act, as added to the Act by Section 241(a) of the Continued Assistance Act, imposes an additional requirement for an individual to meet the definition of a “covered individual.” Within a specified period of time after the initial PUA claim filing or after being directed to do so by the Department, the individual must “provide[] documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment[.]”

individual's own farm." Pursuant to federal guidance, 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."<sup>2</sup> U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) (UIPL 16-20, Change 4), at I-10.

The order under review concluded that claimant was not entitled to receive PUA benefits. Order No. 21-UI-167579 at 3. The record as developed is insufficient to support this conclusion.

On remand, the ALJ must develop the record sufficient to assess the applicability of the above requirements and criteria that govern PUA. First, the ALJ should ask questions to establish whether claimant was not eligible for regular unemployment insurance benefits, extended benefits, or pandemic emergency unemployment compensation benefits during the weeks at issue. Next, the ALJ should develop whether claimant was "self-employed" for purposes of section 2102(a)(3)(A)(ii)(II) by virtue of his scrap metal and bottle and can collection activities during the weeks at issue. To this end, the ALJ should ask questions to develop the following: whether claimant was primarily reliant for income on his scrap metal and bottle and can collection activities; what services, if any, did claimant perform in connection with the scrap metal and bottle and can collection activities (such as whether anyone benefited from him hauling away the scrap or whether he sold the scrap to buyers in addition to recycling centers); and whether or not claimant's bottle and can collection activities had the characteristics of a business (such as, for example, whether claimant had a business plan, had formed a business entity, or had ever paid business taxes). Finally, 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 section 2102(a)(3)(A)(ii)(I)(aa) through (kk). With respect to § 2102(a)(3)(A)(ii)(I)(kk), if the record on remand shows that claimant was self-employed, the record should be developed to determine whether claimant experienced a significant diminution of services because of the COVID-19 public health emergency.

Additionally, the order under review concluded that the weeks at issue are the weeks including March 8, 2020 through May 8, 2021 (weeks 11-20 through 18-21). Order No. 21-UI-167579 at 1. The record does not support this conclusion. The record reflects that the weeks at issue are the weeks including March 8, 2020 through July 11, 2020 (weeks 11-20 through 28-20) and the weeks including July 19, 2020 through May 8, 2021 (weeks 30-20 through 18-21). *See* Transcript at 5-6. On remand, the inquiry outlined above should pertain to the weeks at issue, which do not include week 29-20.

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-167579 is reversed, and this matter is remanded.

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<sup>2</sup> Such documentation must demonstrate proof of self-employment between the start of the applicable taxable year and the date the individual initially filed for PUA. UIPL 16-20, Change 4 at I-11.

**DECISION:** Order No. 21-UI-167579 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: July 15, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-167579 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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.

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