

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0511**

*Affirmed*

*Ineligible for Pandemic Unemployment Assistance weeks 16-20 through 10-21*  
*Eligible for Pandemic Unemployment Assistance weeks 11-21 through 20-21*

**PROCEDURAL HISTORY:** On September 11, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during each of the weeks including April 12, 2020 through September 5, 2020 (weeks 16-20 through 36-20) because he was outside of the United States and was therefore ineligible for Pandemic Unemployment Assistance (PUA) benefits for those weeks and until the reason for the denial had ended (decision # 60749). Claimant filed a timely request for hearing. On June 3, 2021, ALJ Snyder conducted a hearing, and on June 11, 2021 issued Order No. 21-UI-168582, modifying decision # 60749 by concluding that claimant was not eligible to receive PUA benefits for the period of April 12, 2020 through March 13, 2021 (weeks 16-20 through 10-21) but was eligible for PUA benefits for the period of March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21). On June 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) Claimant was self-employed. His business involved building bamboo stages and other structures at international music festivals.

(2) On March 10, 2020, claimant traveled to Argentina for a set-building project. Shortly after claimant arrived in Argentina, the country imposed restrictions to address the COVID-19 pandemic. Claimant's project was canceled and claimant was placed in a "strict[] . . . pandemic lockdown." Transcript at 14.

(3) On or about May 1, 2020, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits. The Department determined that claimant established a valid claim for PUA benefits.

(4) On March 14, 2021, claimant returned from Argentina to his home in Newport, Oregon. Following claimant's return, the music festival and concert industry "continue[d] to be closed" and "d[id]n't exist because of the pandemic." Transcript at 13. Claimant had one set-building project scheduled for April 2021, but that project was cancelled due to the COVID-19 pandemic.

(5) Claimant claimed PUA benefits for each of the weeks including April 12, 2020 through May 22, 2021 (weeks 16-20 through 20-21). These are the weeks at issue.

(6) The Department paid claimant PUA benefits for the weeks including April 12, 2020 through May 16, 2020 (weeks 16-20 through 20-20) and March 14, 2021 through May 8, 2021 (weeks 11-21 through 18-21) and the week of May 16, 2021 through May 22, 2021 (week 20-21). The Department did not pay claimant PUA benefits for the weeks including May 17, 2020 through March 13, 2021 (weeks 21-20 through 10-21), and the week of May 9, 2021 through May 15, 2021 (week 19-21).<sup>1</sup>

**CONCLUSIONS AND REASONS:** Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for the weeks including April 12, 2020 through March 13, 2021 (weeks 16-20 through 10-21). Claimant was entitled to receive Pandemic Unemployment Assistance benefits for the weeks including March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21).

**Ineligible for PUA benefits weeks 16-20 through 10-21.** 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,” 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). 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* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) at I-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 2102(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 or spent the major portion of the week outside of the United States, District of Columbia, or any territory or political division that is directly overseen by the United States federal government unless the individual resided or spent the major portion of the week: (A) in Canada and was authorized to work in Canada; (B) in a country included in the Compact of Free Association with the United States of America;<sup>2</sup> or (C) at a military base or embassy located outside the United States but

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<sup>1</sup> EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

<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.

directly overseen by the United States federal government, if the individual is the spouse or domestic partner of an individual stationed at such a base or embassy. OAR 471-030-0036(3)(i). *See also* ORS 657.155(2)(a) (“An individual who leaves the individual’s normal labor market for the major portion of any week is presumed to be unavailable for work[.]”).

The record shows that, during the weeks including April 12, 2020 through March 13, 2021 (weeks 16-20 through 10-21), claimant was in Argentina. Argentina 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 Argentina during the weeks he claimed PUA benefits for weeks 16-20 through 10-21, 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 for those weeks, and therefore did not constitute a “covered individual” for purposes of § 2102(a)(3) of the CARES Act. As a result, claimant was not eligible to receive PUA benefits for weeks 16-20 through 10-21.

In his written argument, claimant asserted that he was available for work for weeks 16-20 through 10-21 by virtue of certain temporary provisions adopted by the Department in response to the COVID-19 pandemic that relax the “available for work” requirement. Written Argument at 2. While it is correct that due to the unique situations arising under COVID-19, temporary provisions exist that can modify the “available for work” analysis, these temporary COVID-19 “available for work” provisions do not apply to claimant’s situation. Because the relevant time period are the weeks of April 12, 2020 through March 13, 2021, there are two temporary COVID-19 “available for work” provisions to consider: (1) temporary rule OAR 471-030-0070(5)(a) (effective March 8, 2020 through September 12, 2020) and, (2) paragraph (5)(a) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility, <https://www.oregon.gov/employ/Documents/Temporary%20Rule-2.pdf> (effective beginning September 13, 2020). The provisions are identical and provide as follows:

Available for work – ORS 657.155(1)(c) and federal law require a person to be available for work in order to receive unemployment insurance benefits. A person will not be deemed unavailable for work because:

(a) They are staying in their home, or are quarantined, due to risk of exposure to, or spread of, the novel coronavirus at the advice of a health care provider or by advice issued by public health officials or by directive of a government official, even if their employer had work for them they could otherwise have performed[.]

The temporary COVID-19 “available for work” provisions do not apply to claimant’s situation because claimant was not available for work under ORS 657.155(2) and OAR 471-030-0036(3)(i), which together provide that an individual who leaves the individual’s normal labor market for the major portion of any week is presumed to be unavailable for work unless certain conditions are met, which have not been met in this case. The temporary COVID-19 “available for work” provisions by their language applied only to ORS 657.155(1)(c) and not to ORS 657.155(2). Accordingly, the temporary COVID-19 “available for work” provisions do not exempt individuals in claimant’s circumstances from the requirements of ORS 657.155(2) and OAR 471-030-0036(3)(i).

For these reasons, claimant was not available for work within the meaning of applicable state law during weeks 16-20 through 10-21, and therefore did not constitute a “covered individual” for purposes of § 2102(a)(3) of the CARES Act for those weeks. As a result, claimant was not eligible to receive PUA benefits for weeks 16-20 through 10-21.

**Eligible for PUA benefits weeks 11-21 through 20-21.** 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. § 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). Relevant additional criteria established by the Secretary of Labor includes “self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.” 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 individual’s own farm.”

The record shows that claimant was self-employed in his bamboo stage construction business during the weeks including March 14, 2021 through May 22, 2021 (weeks 11-21 through 20-21). The record further supports that claimant had a set-building project scheduled in April 2021 that was cancelled due to the COVID-19 pandemic and that during weeks 11-21 through 20-21, the international music festival and concert industry “continue[d] to be closed” and “d[id]n’t exist because of the pandemic.” Transcript at 13.

This evidence is sufficient to establish that during weeks 11-21 through 20-21, claimant was a self-employed individual who experienced a significant diminution of services because of the COVID-19 public health emergency. Therefore, under § 2102(a)(3)(A)(ii)(I)(kk), claimant satisfied additional criteria established by the Secretary of Labor and constituted a “covered individual” for those weeks. Accordingly, claimant was eligible to receive PUA benefits for weeks 11-21 through 20-21.

**DECISION:** Order No. 21-UI-168582 is affirmed.

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

**DATE of Service: July 27, 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 ‘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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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