

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0941**

*Affirmed*  
*Ineligible for PEUC Benefits Weeks 18-20 through 33-20*

**PROCEDURAL HISTORY:** On September 10, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits from April 26, 2020 through July 25, 2020 (weeks 18-20 through 30-20) (decision # 95438). On September 30, 2020, decision # 95438 became final without claimant having filed a request for hearing. On May 27, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 18, 2021 issued Order No. 21-UI-169008, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 2, 2021. On July 2, 2021, claimant filed a timely response to the appellant questionnaire, and on July 8, 2021 the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-169008 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing would be allowed and, if so, the merits of decision # 95438. On July 26, 2021, ALJ Frank conducted the hearing, and on July 29, 2021 issued Order No. 21-UI-171394, re-dismissing claimant's request for hearing as late without good cause, leaving decision # 95438 undisturbed. On August 11, 2021, claimant filed an application for review of Order No. 21-UI-171394 with the Employment Appeals Board (EAB).

On September 9, 2021, EAB issued EAB Decision 2021-EAB-0659, reversing Order No. 21-UI-171394, by concluding that claimant's late request for hearing should be allowed and remanding the matter to OAH for a hearing on the merits hearing of decision # 95438. On October 13, 2021, ALJ Frank conducted a hearing, and on October 21, 2021 issued Order No. 21-UI-177762, modifying decision # 95438 by concluding that claimant was not eligible for PEUC benefits from April 26, 2020 through August 15, 2020 (weeks 18-20 through 33-20).<sup>1</sup> On November 5, 2021, claimant filed an application for review of Order No. 21-UI-177762 with EAB.

<sup>1</sup> The order under review stated that it affirmed decision # 95438. Order No. 21-UI-177762 at 3. However, the order under review modified decision # 95438 by concluding that claimant was ineligible for PEUC benefits for additional weeks. Order No. 21-UI-177762 at 3.

**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 filed weekly claims for PEUC benefits with the Department for the weeks from April 26, 2020 and August 15, 2020 (weeks 18-20 through 33-20), the weeks at issue. The Department paid claimant for all of the weeks at issue except weeks 32-20 and 33-20.

(2) On September 10, 2020, the Department issued decision # 95438 concluding that claimant was ineligible for the PEUC benefits he had received because he was monetarily eligible for regular unemployment insurance (regular UI) benefits in California. The Department reached decision # 95438 after it discovered that claimant had earned \$278 in previously unreported wages in the State of California during the second quarter of 2019. The Department determined that these second quarter California wages, coupled with wages claimant had earned in Oregon during the second and third quarter of 2019, made claimant eligible in California for a combined wage claim (CWC) for regular benefits beginning the week of 18-20.

(3) Claimant has not pursued a CWC in California.

**CONCLUSIONS AND REASONS:** Claimant is not eligible for PEUC benefits in Oregon for the weeks including April 26, 2020 through August 15, 2020 (weeks 18-20 through 33-20).

Title II, Subtitle A, Section 2107 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Public Law (Pub. L.) 116-136 provides, in relevant part:

SEC. 2107. PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION

(a) FEDERAL-STATE AGREEMENTS. -

\* \* \*

(2) PROVISIONS OF AGREEMENT.- Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019); [and]

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law[.]

The Department paid claimant PEUC benefits for all but weeks 32-20 and 33-20. For that reason, the Department had the burden to establish that claimant should not have been paid benefits for weeks 18-20 through 31-20, while claimant had the burden to establish that claimant should have been paid benefits for weeks 32-20 and 33-20. *See 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).

Eligibility for PEUC benefits under the CARES Act is available to individuals who have exhausted their eligibility for regular UI compensation in Oregon and do not have eligibility for regular UI compensation in any other state. The record shows that beginning week 18-20, when the State of Oregon initially began paying claimant weekly PEUC benefits in error, claimant was eligible for a regular UI CWC in California based on wages he had earned in California during the second quarter of 2019 and wages he had earned in Oregon during the second and third quarters of 2019. Therefore, because claimant was eligible for a CWC for regular UI benefits in California beginning the week of 18-20, he was not eligible for PEUC benefits in Oregon beginning week 18-20, nor any of the other weeks at issue.

For these reasons, claimant is not eligible for PEUC benefits in Oregon for the weeks from April 26, 2020 through August 15, 2020 (weeks 18-20 through 33-20).

**DECISION:** Order No. 21-UI-177762 is affirmed.

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

**DATE of Service: December 13, 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.

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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