

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0977**

*Affirmed*  
*Ineligible for Pandemic Unemployment Assistance*

**PROCEDURAL HISTORY:** On September 17, 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 effective December 6, 2020. Claimant filed a timely request for hearing. On November 2, 2021, ALJ Murdock conducted a hearing, and on November 3, 2021 issued Order No. 21-UI-178938, affirming the September 17, 2021 administrative decision. On November 17, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted written arguments on November 19, 2021, November 29, 2021 and December 13, 2021. Claimant's arguments 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 arguments to the extent they were based on the record.

**FINDINGS OF FACT:** (1) On or about April 18, 2020, claimant filed an initial claim for benefits under the regular unemployment insurance program (Regular UI). The Department determined that claimant had earned sufficient base year wages for her claim to be monetarily valid with a weekly benefit amount of \$174 and that her claim had a benefit year expiration date effective the end of the week of April 4, 2021 through April 10, 2021 (week 14-21).

(2) Claimant claimed benefits under her Regular UI claim for the week of April 12, 2020 through April 18, 2020 (week 16-20). The Department did not initially pay claimant benefits for that week based on questions regarding her work search responses, but claimant's Regular UI claim remained valid and the Department did not advise claimant to stop claiming benefits for subsequent weeks. Claimant did not claim benefits under her Regular UI claim for any week after week 16-20.

(3) On May 7, 2021, the Department paid claimant regular benefits for week 16-20. The Department never issued a denial of regular benefits under claim BYE 14-21 and regular benefits remained available under that claim until the maximum benefit amount payable under that claim was exhausted.

(4) On September 13, 2021, claimant filed an initial claim for benefits under the PUA program. Claimant claimed benefits under her PUA claim for each of the weeks including April 12, 2020, through September 19, 2020 (weeks 16-20 through 38-20), the weeks at issue. However, for each of the weeks claimant claimed PUA benefits, claimant's rights to benefits under her Regular UI claim were unexhausted. As a result, the Department deemed claimant not entitled to PUA and did not pay claimant benefits.

**CONCLUSIONS AND REASONS:** Claimant was not entitled to receive Pandemic Unemployment Assistance benefits for weeks 16-20 through 38-20.

Under the CARES Act, 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). In pertinent part, the Act defines a "covered individual" as "an individual who . . . 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[.]" Pub. L. 116-136, § 2102(a)(3)(A)(i) (emphasis added). Thus, if an individual has not exhausted all rights to a Regular UI claim, they do not constitute a "covered individual" and are not entitled to receive PUA benefits.

Claimant was not entitled to receive PUA benefits for the weeks at issue because she had not exhausted all rights to her Regular UI claim. 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 \$174. The Department determined that the claim would expire effective the end of the week of April 4, 2021 through April 10, 2021 (week 14-21). During each of the weeks at issue, for which claimant made claims for benefits under the PUA program on September 13, 2021, her Regular UI claim remained unexpired with unexhausted regular benefits. Accordingly, the record shows that claimant had not exhausted all rights to benefits under her Regular UI claim for the weeks at issue, and for that reason claimant was not a "covered individual" entitled to receive PUA benefits.

In written argument, claimant asserted that under § 2107(3)(B) of the CARES Act, "Exhaustion of Benefits" is defined as follows:

"(3) EXHAUSTION OF BENEFITS. For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when –

(3)(B) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed."

December 13, 2021 Written Argument at 2. Claimant argued that under the provision in question, she should be deemed to have exhausted her regular benefits and thus be eligible for PUA benefits because she was first notified that her claim for regular benefits "was valid" in May of 2021, after the expiration of the benefit year for claim BYE 14-21, which occurred at the end of the week of April 4, 2021 through April 10, 2021 (week 14-21). December 13, 2021 Written Argument at 1-2. However, the CARES Act

specifies that the particular exhaustion of benefits provision cited by claimant relates not to PUA, but to a different unemployment compensation program established by the Act, namely Pandemic Emergency Unemployment Compensation. Moreover, claimant only claimed PUA benefits for the weeks including April 12, 2020, through September 19, 2020 (weeks 16-20 through 38-20), each of which occurred while claimant's Regular UI claim remained valid, and prior to expiration of the benefit year in question - the end of the week of April 4, 2021 through April 10, 2021 (week 14-21). Accordingly, even if the provision cited by claimant were applicable to her circumstances, claimant's argument would still be without merit.

Even if claimant were deemed a "covered individual" for purposes of PUA eligibility, claimant failed to timely file for PUA claims and is not eligible for "backdating" the PUA claims. Claimant asserted that she should be "eligible for backdating" her PUA claims for benefits because her first finding out that her claim for regular benefits was valid in May of 2021 constituted a "barrier to filing her PUA claims for benefits prior to December 28, 2020. December 13, 2021 Written Argument at 1. However, the record does not support that argument.

At hearing, the Department's witness explained that if a claimant did not apply for PUA benefits by December 27, 2020, the farthest back a claim for PUA benefits could be backdated was December 6, 2020. Transcript at 5-6. Because claimant filed her initial claim for PUA benefits on September 13, 2021, which was after December 27, 2020, none of the weeks at issue is eligible to be backdated. The witness also explained that if a claimant *timely* filed a claim for *regular* benefits prior to December 27, 2020, and that claim was later denied, under some circumstances, a claimant who first filed for PUA *after* December 27, 2020 might be eligible for backdated claims for PUA for the time period they timely filed claims for regular benefits. Transcript at 7-8. Accordingly, even if claimant were a "covered individual" for purposes of PUA eligibility, which she is not, claimant did not timely file PUA weekly claims and would not be eligible for backdating her claims.

For these reasons, claimant was not entitled to receive PUA benefits for the weeks including April 12, 2020 through September 19, 2020 (weeks 16-20 through 38-20).

**DECISION:** Order No. 21-UI-178938 is affirmed.

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

**DATE of Service:** December 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](https://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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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 desisyong ito.

## 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 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**  
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