

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1059**

*Modified*

*Eligible for Pandemic Unemployment Assistance Weeks 40-20 through 45-20, 47-20 through 52-20  
Ineligible for Pandemic Unemployment Assistance Weeks 25-21, 28-21, 29-21, 31-21, and 32-21*

**PROCEDURAL HISTORY:** On October 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 receive PUA benefits starting December 27, 2020 because he failed to provide acceptable proof of employment or self-employment within the required period. Claimant filed a timely request for hearing. ALJ Monroe conducted a hearing on November 9, 2021 that was continued to November 12, 2021. On November 22, 2021, ALJ Monroe issued Order No. 21-UI-180300, modifying the October 5, 2021 administrative decision by concluding that claimant was not eligible to receive PUA benefits for the weeks from September 27, 2020 through December 26, 2020 (weeks 40-20 through 52-20), June 20, 2021 through June 26, 2021 (week 25-21), July 11, 2021 through July 24, 2021 (weeks 28-21 through 29-21), and August 1, 2021 through August 14, 2021 (week 31-21 through 32-21). On December 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On January 22, 2021, claimant filed an application for PUA benefits with the Department. On the application, claimant stated that he had been scheduled to commence employment at a school on March 16, 2020 but he did not have a job because the school closed due to the COVID-19 public health emergency.

(2) On January 24, 2021, claimant submitted to the Department a document labeled “proof of employment.” November 9, 2021 Transcript at 17. However, the document was actually an application for Pandemic Emergency Unemployment Compensation (PEUC), a different benefits program. The

document contained claimant's work search activities for the week of January 24, 2021, but did not substantiate claimant's planned commencement of employment on March 16, 2020.

(3) On June 21, 2021, claimant claimed PUA benefits for the weeks from September 27, 2020 through November 7, 2020 (weeks 40-20 through 45-20) and November 15, 2020 through December 26, 2020 (weeks 47-20 through 52-20). The Department paid claimant benefits for these weeks. Claimant also claimed PUA benefits for the weeks from June 20, 2021 through June 26, 2021 (week 25-21), July 11, 2021 through July 24, 2021 (weeks 28-21 through 29-21), and August 1, 2021 through August 14, 2021 (weeks 31-21 through 32-21). The Department did not pay claimant benefits for these weeks. All told, the weeks at issue are weeks 40-20 through 45-20, 47-20 through 52-20, 25-21, 28-21 through 29-21, and 31-21 through 32-21.

(4) On June 22, 2021, the Department sent claimant a notification instructing him to provide proof of his planned commencement of employment on March 16, 2020. Claimant did not receive the notification.

**CONCLUSIONS AND REASONS:** Claimant was eligible for PUA benefits for weeks 40-20 through 45-20 and 47-20 through 52-20. Claimant was not eligible for PUA benefits for weeks 25-21, 28-21 through 29-21, and 31-21 through 32-21.

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).

In addition, section 2102(a)(3)(A)(iii) of the CARES Act, as amended by Section 241(a) of the Continued Assistance Act ("CAA"), requires individuals to submit documentation to substantiate their employment or self-employment, or the planned commencement of employment or self-employment, within a specified period of time in order to meet the definition of a "covered individual." As explained by federal guidance, the provision requires that "individuals . . . who file a new initial PUA claim before January 31, 2021" and "who receive PUA on or after December 27, 2020, must provide documentation within 90 days of the application date or the date the individual is instructed to provide such documentation by the state agency (whichever date is later)." 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. This requirement "includes any individual who receives any payment of PUA on or after December 27, even if the payment is for a week of unemployment that occurred before December 27, 2020." UIP 16-20 Change 4 at I-9. Acceptable proof of the planned commencement of employment includes, but is not limited to, letters offering employment, and statements/affidavits by individuals (with name and contact information) verifying an offer of employment. UIP 16-20 Change 4 at I-10-11. If an individual fails to provide documentation substantiating planned commencement of employment within the required timeframe, under Section 241(b)(2) of the CAA, the individual is not considered ineligible for PUA

benefits received before December 27, 2020 but “the state may . . . establish an overpayment for those weeks of unemployment ending on or after December 27, 2020[.]” UIPL 16-20, Change 4 at I-11.

The record shows that claimant filed an initial claim for PUA benefits on January 22, 2021 and received PUA benefits on June 21, 2021. Thus, the requirement to substantiate the planned commencement of employment applied to claimant because he was an individual who filed a new PUA claim before January 31, 2021 and received PUA benefits on or after December 27, 2020. Pursuant to that requirement, claimant was required to provide documentation substantiating his planned commencement of employment by the later of 90 days of his January 22, 2021 PUA application date or of the June 22, 2021 date the Department sent notification to him to provide documentation. The later of those two dates was 90 days after the June 22, 2021 date the Department sent notification to claimant to provide documentation, which was September 20, 2021. Claimant testified at hearing that he did not receive this notification from the Department. However, there is no indication from the face of the CARES Act or of the CAA that claimant’s failure to receive notification relieved him of the duty to provide documentation substantiating the planned commencement of employment within the required timeframe. In any event, the record supports that claimant was more likely than not aware of the requirement to provide substantiating documentation because, as discussed below, he attempted to do so on January 24, 2021.

Claimant did not provide documentation substantiating his planned commencement of employment by September 20, 2021. Rather, on January 24, 2021, claimant submitted to the Department a document labeled “proof of employment,” which contained only his report of work search activities for the week of January 24, 2021 and was not sufficient to substantiate claimant’s planned commencement of employment on March 16, 2020. Thus, claimant failed to provide substantiating documentation within the required timeframe. That means that, so far as the administrative decision that is the subject of the order under review is concerned, claimant is not considered ineligible for PUA benefits received before December 27, 2020 but is ineligible for PUA benefits for weeks of unemployment ending on or after December 27, 2020.<sup>1</sup>

The order under review concluded that claimant was ineligible for PUA benefits for all of the weeks at issue because claimant did not constitute a “covered individual” under the CARES Act. Order No. 21-UI-180300 at 5. However, the October 5, 2021 administrative decision that is the subject of the order under review was limited in scope to the substantiation of planned commencement of employment issue. Based on testimony at hearing, a separate administrative decision exists that is also dated October 5, 2021 but is broader in scope and concluded that claimant was ineligible for PUA entirely for lack of a COVID-19 qualifying reason. November 12, 2021 Transcript at 4–5. Nevertheless, given that the administrative decision actually appealed in this case relates to the substantiation of planned commencement of employment issue, and claimant was not provided notice or an opportunity to object to the ALJ addressing broader issues, the scope of review here must be limited to the issue presented by

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<sup>1</sup> In the event that claimant’s failure to receive the Department’s June 22, 2021 notification might result in the deadline to provide substantiating documentation to be 90 days from the date of claimant’s January 22, 2021 PUA application, the same result would follow. In that scenario, claimant would have been required to provide substantiating documentation by April 22, 2021. The record shows claimant did not provide documentation substantiating his planned commencement of employment by April 22, 2021, just as it shows that he did not do so by September 20, 2021. Thus, whether the deadline is April 22, 2021 or September 20, 2021, claimant failed to provide substantiating documentation within the required timeframe.

that administrative decision. *See* OAR 471-040-0025(8) (“[I]n no event shall the administrative law judge accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.”).

For these reasons, the order under review is modified. Claimant was eligible for PUA benefits for weeks 40-20 through 45-20 and 47-20 through 52-20, and was ineligible for PUA benefits for weeks 25-21, 28-21 through 29-21, and 31-21 through 32-21.

**DECISION:** Order No. 21-UI-180300 is modified, as outlined above.

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

**DATE of Service:** January 13, 2022

**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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# 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 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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