

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0087**

*Modified*

*Eligible for PUA weeks 14-20 through 25-20, 27-20 through 33-20, and 35-20*

*Not Eligible for PUA weeks 36-20 through 40-20, 46-20 through 47-20, and 49-20 through 25-21*

**PROCEDURAL HISTORY:** On December 16, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective February 2, 2020. On January 5, 2021, the December 16, 2020 administrative decision became final without claimant having filed a request for hearing. On February 18, 2021, claimant filed a late request for hearing on the December 16, 2020 administrative decision. ALJ Kangas considered claimant's request, and on March 25, 2021 issued Order No. 21-UI-163444, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 8, 2021. On March 31, 2021, claimant filed a timely response to the appellant questionnaire. On April 30, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-163444 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of the December 16, 2020 administrative decision. On July 28, 2021, ALJ Scott conducted a hearing, and on August 5, 2021 issued Order No. 21-UI-171951, concluding that claimant had good cause to file the late request for hearing, and affirming the December 16, 2020 administrative decision. On August 12, 2021, claimant filed an application for review of Order No. 21-UI-171951 with the Employment Appeals Board (EAB). On September 14, 2021, EAB issued EAB Decision 2021-EAB-0650, adopting and affirming the portion of Order No. 21-UI-171951 concluding that claimant had good cause for filing the late request for hearing, and reversing and remanding the order for further development of the record regarding whether claimant was eligible for PUA benefits.

On December 22, 2021, ALJ Scott conducted an additional hearing and issued Order No. 21-UI-182484, modifying the December 16, 2020 administrative decision by concluding that claimant was eligible to receive PUA benefits for the weeks including March 29, 2020 through August 29, 2020 (weeks 14-20 through 35-20). On January 11, 2022, 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.

**FINDINGS OF FACT:** (1) In 2019, claimant “regularly throughout the year” collected scrap metal and aluminum cans from a particular shop. Exhibit 4 at 7. Claimant then brought those materials to a scrap metal recycling company and exchanged the materials for money. Exhibit 4 at 8; July 28, 2021 Transcript at 28. Claimant continued carrying on these services throughout January, February, and March 2020.

(2) On March 16, 2020, following the onset of the COVID-19 pandemic, the scrap metal recycling company closed due to COVID-19 safety precautions. As a result, claimant stopped bringing scrap metal and aluminum cans to the recycling company to exchange the materials for money.

(3) Claimant’s primary source of income during 2019 and prior to the onset of the pandemic in March 2020 was the money generated by exchanging scrap materials with the recycling company.

(4) At the end of August 2020, the scrap metal recycling company reopened.

(5) Claimant filed an initial claim for PUA benefits on December 9, 2020. At the time he filed an initial claim for PUA benefits, claimant was not eligible for regular unemployment insurance benefits, extended benefits, or Pandemic Emergency Unemployment Compensation (PEUC) benefits. Claimant claimed PUA benefits for the weeks including March 29, 2020 through June 20, 2020 (weeks 14-20 through 25-20), June 28, 2020 through August 15, 2020 (weeks 27-20 through 33-20), August 23, 2020 through October 3, 2020 (weeks 35-20 through 40-20), November 8, 2020 through November 21, 2020 (week 46-20 through 47-20), and November 29, 2020 through June 26, 2021 (weeks 49-20 through 25-21).<sup>1</sup> These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant was eligible to receive Pandemic Unemployment Assistance benefits for the weeks including March 29, 2020 through June 20, 2020 (weeks 14-20 through 25-20), June 28, 2020 through August 15, 2020 (weeks 27-20 through 33-20), August 23, 2020 through August 29, 2020 (week 35-20). Claimant was not eligible to receive Pandemic Unemployment Assistance benefits for the remaining weeks at issue.

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”

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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.

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)(ii)(I). 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 are “self-employed . . . or otherwise would not qualify for regular unemployment or extended benefits . . . or pandemic emergency unemployment compensation . . . and meets 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.” 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.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) at I-10.

Claimant established that he was a “covered individual” entitled to PUA benefits for the weeks at issue that occurred between March 29, 2020 and the end of August 2020 when the scrap metal recycling company to whom he sold scrap reopened. Claimant met the first requirement of PUA eligibility because he was not eligible for regular unemployment insurance, extended benefits, or PEUC during the weeks at issue. Next, the record is sufficient to establish that claimant was self-employed because claimant submitted affidavits and receipts, admitted at the December 22, 2021 hearing as Exhibit 4, that were adequate to show that claimant’s scrap metal recycling services were services performed in claimant’s own business. Further, the record supports that claimant’s primary reliance for income was the recycling services he performed because claimant’s primary source of income during 2019 and prior to the onset of the pandemic in March 2020 was the money generated by his scrap metal recycling services.

Finally, as to the weeks at issue that occurred between March 29, 2020 and the end of August 2020, claimant produced evidence sufficient to show that he met the subclause 2102(a)(3)(A)(ii)(I)(kk) additional criteria relating to experiencing a significant diminution of self-employment services because of the COVID-19 public health emergency. This is because during that time period, the scrap metal recycling company to which claimant sold scrap materials closed due to COVID-19 safety precautions and during the period of the company’s closure, claimant’s services were significantly reduced. However, at the end of August 2020, the scrap metal recycling company reopened, which meant that the factor that was a direct result of the COVID-19 public health emergency and had significantly reduced claimant’s services ended. The closure of the recycling company was the only source of a reduction of services caused directly by the COVID-19 public health emergency for which claimant offered any evidence. Claimant failed to provide evidence that he experienced a significant diminution of self-

employment services after the end of August 2020 as a direct result of the COVID-19 public health emergency from any other source. Claimant may have experienced general financial difficulties after the end of August 2020. However, the record does not show that such difficulties were a direct result of the COVID-19 public health emergency.

Thus, claimant established that for the weeks including March 29, 2020 through June 20, 2020 (weeks 14-20 through 25-20), June 28, 2020 through August 15, 2020 (weeks 27-20 through 33-20), and August 23, 2020 through August 29, 2020 (week 35-20), he met the criteria necessary to constitute a “covered individual” and was eligible to receive PUA benefits.

However, as to the remaining weeks at issue, September 30, 2020 through October 3, 2020 (weeks 36-20 through 40-20), November 8, 2020 through November 21, 2020 (week 46-20 through 47-20), and November 29, 2020 through June 26, 2021 (weeks 49-20 through 25-21), the record does not show that claimant was a self-employed individual who experienced a significant diminution of services because of the COVID-19 public health emergency. Therefore, claimant did not constitute a “covered individual” and was not eligible to receive PUA benefits for those weeks.

**DECISION:** Order No. 21-UI-182484 is modified, as outlined above.

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

**DATE of Service:** February 23, 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.

**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  
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