

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0122**

*Modified*  
*Request to Reopen Granted*  
*Eligible for Pandemic Unemployment Assistance Weeks 23-20 through 23-21*

**PROCEDURAL HISTORY:** On May 21, 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 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. On July 7, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 21, 2021, at 1:30 p.m. On July 21, 2021, claimant failed to appear at the hearing, and ALJ Janzen issued Order No. 21-UI-170858 dismissing claimant's request for hearing and leaving the May 21, 2021 administrative decision undisturbed.

On August 9, 2021, claimant filed a request to reopen the July 21, 2021 hearing. On December 7, 2021, OAH served notice of a hearing scheduled for December 29, 2021 to address whether claimant had good cause to reopen the July 21, 2021 hearing and if so, the merits of the May 21, 2021 administrative decision. On December 29, 2021, ALJ Janzen conducted a hearing, and on December 30, 2021 issued Order No. 21-UI-183022, granting claimant's request to reopen, vacating Order No. 21-UI-170858, and modifying the May 21, 2021 administrative decision by concluding that claimant was not eligible to receive PUA benefits for the weeks including June 7, 2020 through June 12, 2021 (weeks 24-20 through 23-21). On January 18, 2022, claimant filed an application for review of Order No. 21-UI-183022 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review granting claimant's request to reopen is **adopted**.

**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) On March 16, 2020, claimant began a self-employment project for a video game company based in Eugene, Oregon. The project called for claimant to assist with art design and help create a video game demo. Claimant worked remotely on the project from Arizona, transmitting work to the Eugene, Oregon-based company via the internet. The company originally intended the project to last six months but, following the onset of the COVID-19 pandemic, they cut the project short because the company's annual trade show was canceled due to the pandemic. The company reduced claimant's work schedule to approximately three months and concluded the project on June 2, 2020.

(2) On June 6, 2020, claimant filed an initial claim for PUA benefits with the Department. 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. The Department determined that claimant's initial claim for PUA was valid.

(3) On January 22, 2021, the Department sent claimant an email instructing him to provide documentation to substantiate his self-employment in connection with his PUA claim. The email stated that acceptable proof to demonstrate self-employment could include, among other things, a business license and business receipts, which may include bank statements. The email instructed claimant to provide substantiating documentation within 90 days of the date of the email, which was April 22, 2021.

(4) On April 12 and 13, 2021, claimant submitted bank statements to the Department in an effort to substantiate his self-employment. The statements showed the account was in the name of claimant's sole proprietorship business entity and displayed deposits from the video game company to claimant's business entity for services rendered. On April 20, 2021, claimant submitted a copy of a business license to the Department in an effort to substantiate his self-employment. The license, which was issued by authorities in Arizona, reflected that claimant's sole proprietorship business was a registered business entity in the state of Arizona.

(5) Claimant claimed PUA benefits for the weeks including May 31, 2020 through June 12, 2021 (weeks 23-20 through 23-21).<sup>1</sup> These are the weeks at issue. The Department paid claimant for the weeks including June 7, 2020 through August 15, 2020 (weeks 24-20 through 33-20) and October 25, 2020 through April 17, 2021 (weeks 44-20 through 15-21). However, the Department did not pay claimant for the week including June 6, 2020 through June 12, 2020 (week 23-20), August 16, 2020 through October 24, 2020 (weeks 34-20 through 43-20), and April 18, 2021 through June 12, 2021 (weeks 16-21 through 23-21).<sup>2</sup>

**CONCLUSIONS AND REASONS:** Claimant was a "covered individual" under the CARES Act and was eligible to receive PUA benefits for the weeks at issue.

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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> 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.

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)(ii)(I). Further, 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). One of qualifying reasons listed in 2102(a)(3)(A)(ii)(I) is 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.

Moreover, 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 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 have an existing PUA claim as of December 27, 2020” 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. Acceptable proof of 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.” UIPL 16-20, Change 4 at I-10. If an individual fails to submit such documentation 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 is otherwise not eligible for PUA and “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 order under review concluded that claimant was not entitled to PUA benefits for all of the weeks at issue, including for the weeks that claimant claimed before December 27, 2020, because claimant did not have an attachment to the Oregon labor market. Order No. 21-UI-183022 at 6. The record does not support this conclusion. The order under review concluded that eligibility for PUA requires an attachment to the Oregon labor market based on a question and answer from a federal guidance document. Order No. 21-UI-183022 at 6. Specifically, in response to the question regarding where an individual living in one state and self-employed in another state should file, the document states: “The self-employed individual must file with the state where he or she was working at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2101(a)(3)(A)(ii)(I) of the CARES Act. If an individual worked in more than one

state at this time, the individual may file in any of those states.” Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020), at I-3.

It is not evident that this question and answer is intended to establish an exclusionary principle whereby an individual may be denied eligibility for PUA benefits; rather, the purpose may simply be to clarify PUA processing procedure for agency staff. In any event, the record evidence is sufficient to show that claimant had an attachment to the Oregon labor market and was effectively working in Oregon at the time he filed his initial claim for PUA benefits. The record shows that beginning in mid-March 2020, an Oregon-based company retained claimant to assist with an art design and a video game demo project. Claimant did so remotely, transmitting work to the Oregon company via the internet and receiving deposits in his bank account for services rendered until June 2, 2020, when the company concluded the project following the onset of the COVID-19 pandemic. Shortly thereafter, on June 6, 2020, claimant filed his initial claim for PUA benefits. Because the record shows that claimant was retained by an Oregon-based company, produced and transmitted work into Oregon for the company’s benefit, and received compensation for services rendered, the evidence is sufficient to conclude that claimant had an attachment to the Oregon labor market and filed for PUA with the state where he was working when he became unemployed.

Turning to the substantiation of self-employment issue, which was the issue that was actually presented by the May 21, 2021 administrative decision, the record shows that claimant filed his initial PUA claim application on June 6, 2020 and received PUA benefits after December 27, 2020. Thus, the requirement to substantiate self-employment applied to claimant because he was an individual with an existing PUA claim as of December 27, 2020 and received PUA benefits on or after December 27, 2020. As such, claimant was required to provide documentation substantiating his self-employment by the later of 90 days of either his initial PUA application date or the date on which the Department directed him to provide such documentation. The later of those two dates was April 22, 2021—90 days after the Department sent notification to claimant to provide documentation on January 22, 2021.

Claimant submitted acceptable proof of self-employment by April 22, 2021. On April 12 and 13, 2021, claimant submitted bank statements to the Department showing an account in the name of claimant’s sole proprietorship business entity and displaying deposits from the Eugene-based video game company to claimant’s business entity for services rendered. Also, on April 20, 2021, claimant submitted a copy of a business license to the Department reflecting that claimant’s sole proprietorship business was a registered business entity in the state of Arizona. Federal guidance indicates that business licenses and receipts are sufficient to prove self-employment. Therefore, claimant satisfied the substantiation requirement by submitting these documents before the April 22, 2021 deadline.

Finally, the record shows that claimant otherwise established that he was a “covered individual” entitled to PUA benefits for the weeks at issue. 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, as discussed above, the record is sufficient to establish that claimant was self-employed because claimant submitted a business license and business receipts in the form of bank statements that are adequate to show that claimant carried on a sole proprietorship business and received deposits from the video game company for services rendered. Lastly, claimant produced evidence sufficient to show that he met the sub clause 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 the record shows that the video game company concluded claimant's video game demo project on June 2, 2020 because the company's annual trade show was canceled due to COVID-19, which is sufficient to show that claimant experienced a significant reduction in services.

For the reasons detailed above, claimant established that he was a "covered individual" under the Act, and was therefore eligible to receive PUA benefits for the weeks at issue.

**DECISION:** Order No. 21-UI-183022 is set aside, as outlined above.

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

**DATE of Service:** March 2, 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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
 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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