

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0169

Affirmed
Eligible for PUA weeks 50-20 through 35-21
Ineligible for PUA week 14-20

PROCEDURAL HISTORY: On May 6, 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 effective December 6, 2020. Claimant filed a timely request for hearing. On November 10, 2021, the Department served an Amended Notice of Determination for PUA concluding that claimant was entitled to receive PUA benefits, provided she met all other eligibility requirements, effective December 6, 2020.¹ On January 11, 2022, ALJ Janzen conducted a hearing, and on January 13, 2022 issued Order No. 22-UI-183942, modifying the November 10, 2021 administrative decision² by concluding that claimant was eligible for PUA benefits for the weeks from December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21), but was not eligible for PUA benefits for the week of March 20, 2020 through April 4, 2020 (week 14-20). On January 27, 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 her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090

¹ Although the record does not show that claimant filed a request for hearing on the November 10, 2021 amended administrative decision, at hearing the ALJ took jurisdiction over all the weeks claimant had claimed, finding those weeks to be within the scope of the notice of hearing.

² The order under review stated that it modified the "May 6, 2021" administrative decision. Order No. 22-UI-183942 at 6. However, the operative administrative decision was the November 10, 2021 amended administrative decision. As such, the order under review's statement that Order No. 22-UI-183942 modified the May 6, 2021 administrative decision, instead of the November 10, 2021 amended administrative decision, is presumed to be a scrivener's error.

(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.

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 concluding that, during the weeks at issue, claimant was a "covered individual," as that term is defined at section 2102(a) of the CARES Act, is **adopted**. The remainder of this decision addresses that portion of the order under review concluding that claimant filed her initial claim for PUA benefits on January 26, 2021 and that, as a result, she was only eligible for PUA benefits for weeks 50-20 through 35-21.

FINDINGS OF FACT: (1) Between April 18, 2020 and April 23, 2020, the Department sent emails to a select group of individuals inviting them to participate in the Department's beta test for the new PUA program. Those selected for the beta test were individuals who had previously applied, unsuccessfully, for regular unemployment insurance (UI) benefits, who had indicated in those regular UI claims that they had been self-employed, and whom the Department had pre-identified as being likely to be eligible for the PUA program. Claimant had not applied for regular UI benefits in 2019 or 2020.

(2) On April 23, 2020, the Department started accepting initial applications from the public for PUA benefits. On May 1, 2020, the Department started accepting weekly claims from the public for benefits from PUA claimants.

(3) On January 26, 2021, claimant filed an initial claim for PUA benefits. The Department determined that claimant was eligible for PUA benefits. At that time, the Department backdated the effective date of claimant's PUA claim to the week of December 6, 2020 (Week 50-20). Claimant claimed benefits for the week of March 20, 2020 through April 4, 2020 (week 14-20),³ and the weeks from December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21). These are the weeks at issue. The Department paid claimant benefits for weeks 50-20 through 35-21. The Department did not pay claimant benefits for week 14-20.

(4) Between January 26, 2021 and December 14, 2021, in an attempt to establish that she had actually filed an initial claim for PUA benefits in April 2020, claimant provided to the Department screenshots of two "automated response" emails she received on "4/19/20" and "6/8/20," respectively. Transcript at 35; Exhibit 1; Exhibit 2. The two emails were from the email address "NO_EMAIL.OED_EMAIL@state.or.us" (hereinafter, "the disputed email address"), and both indicated that claimant's weekly PUA certifications had been received. Exhibit 1; Exhibit 2. Because the dates on the screenshot emails supported an inference that claimant might have filed an initial claim in April 2020, the Department conducted an investigation into "the email issue." Exhibit 4 at 2.

(5) On or about December 14, 2021, the Department concluded their investigation into the "4/19/20" and "6/8/20" emails. The Department's investigation determined that they did not "make the email contacts alleged," that they did not "begin sending PUA automated notifications for weekly certifications such as those pictured in the screenshots provided until June 15, 2020," and that when they did send those emails it was not from the disputed email address, but a different email address. Exhibit 4

³ Claimant claimed week 14-20 on February 2, 2021.

at 1. The Department's investigation also determined that they had sent 43 emails to claimant's email address, the first of which was on January 26, 2021.

CONCLUSIONS AND REASONS: Claimant was eligible for PUA benefits for the weeks from December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21). Claimant was not eligible for PUA benefits for week 14-20.

To be eligible to receive PUA benefits under the CARES Act, an individual must be a "covered individual" as that term is defined by the Act. Pub. L. 116-136, § 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, partially unemployed, or unable or unavailable to work because of one or more of 11 listed reasons that relate to the COVID-19 pandemic. Pub. L. 116-136, § 2102(a)(3)(A).

On December 27, 2020, the Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 ("CAA"), was signed into law and included certain changes to the PUA program through amendment of the CARES Act, as addressed herein. In relevant part, § 201(f) of the CAA modified the CARES Act such that initial PUA claims filed after December 27, 2020 may be backdated to an effective date of no earlier than December 6, 2020. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (UIPL 16-20), Change 4, (Jan. 8, 2021) at 26-27.

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). *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The only controversy in this matter is claimant's assertion that she first filed her initial claim for PUA benefits in April 2020. Whether claimant first filed her initial PUA claim in April 2020, rather than January 26, 2021, is material because, prior to December 27, 2020, initial PUA claims were required to be backdated to the "first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act."⁴ Initial PUA claims filed after December 27, 2020 may only be backdated to December 6, 2020. Thus, if claimant had first filed an initial claim for PUA benefits in April 2020, that claim may have been backdated to the first week that claimant was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason, which for the purposes of this decision is week 14-20.

⁴ See U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) at 5.

At hearing, claimant testified that she filed in her initial claim for PUA benefits online in April 2020 online and that she “believ[ed]” she accessed the online application via an emailed link from the Department. Transcript at 23; Audio Record at 47:49. Claimant could not recall, however, whether the Department’s email with the application link came directly from the Department, or whether it may have been forwarded to her from elsewhere, and she could not recall if the email had anything to do with the Department’s beta testing program. Transcript at 24; 45. Claimant further contended that after she filed her April 2020 initial PUA claim for benefits, she filed weekly claims for PUA benefits from May 2020 through September 2020, but the only response she received from the Department were emails that confirmed receipt of her weekly certifications. Transcript at 32, 35.

As noted above, claimant supported these contentions by introducing screenshots of two of these emails sent from the disputed email address.⁵ Other than the emails she received from the Department that purportedly acknowledged receipt of her weekly PUA claims, claimant heard nothing else from the Department, and was unable to reach the Department by phone despite multiple attempts to do so during this period of time. Transcript at 30. In October 2020, claimant “gave up” and stopped filing weekly PUA claims, but later “restarted [her] efforts” to obtain PUA benefits by filing what she referred to as a “continued” claim for PUA benefits on January 26, 2021. Transcript at 30, 31, 32. In light of this evidence, claimant argued that the record showed that she filed her initial claim for PUA benefits in April 2020, that this April 2020 filing date entitled her to have her PUA claim backdated to March 2020, and that because she filed weekly claims for PUA benefits from May 2020 through September 2020 she should be eligible for PUA benefits for the weeks encompassed within those months.

The Department’s witness testified that the first record the Department had of any PUA-related “comment [or] documentation” from claimant was claimant’s January 26, 2021 claim for PUA benefits, which the department viewed as her *initial* claim for PUA benefits. Transcript at 5. This testimony contradicted claimant’s contention that she had filed an initial claim for PUA benefits in April 2020 and also her claim that she had filed weekly PUA benefit claims beginning week 14-20 through the October 2020 timeframe when claimant indicated that she had given up her pursuit of PUA benefits. Transcript at 20-21. Furthermore, the Department’s witness testified to her “confus[ion]” over the “4/19/20” automated response email claimant received because, although that date fell within the PUA program beta testing window, it was not during a time when the Department would have had reason to issue anyone a weekly PUA certification confirmation email. Transcript at 6-7. Likewise, the Department’s witness noted that claimant was not likely a candidate for the beta testing program because she had not previously filed a claim for regular UI benefits. Transcript at 46. In light of this evidence and the findings from the Department’s investigation of the email address issue, the Department took the position that although claimant was entitled to benefits for weeks 50-20 through 35-21 based of her January 26, 2021 initial PUA claim, she was not entitled to PUA benefits for week 14-20 because she had not filed an initial claim for PUA benefits prior to December 27, 2020.

⁵ Although claimant testified that she had received a number of these “automated response” emails from the Department related to her weekly claims for benefits, she discovered in October 2020 that many of her emails were missing from this time period, including these automated response emails from the Department. Transcript at 35-36. Although claimant contacted her email provider for assistance in recovering the emails, she was unsuccessful. Transcript at 36. However, in an attempt to corroborate that the same weekly certification receipt email was being sent by the Department to other individuals from the same disputed email address during this time period, claimant did introduce automated response emails from a third party that were identical in nature to the emails contained in Exhibits 1 and 2. Exhibit 7.

In this case, claimant has attempted to show that she actually filed her initial claim for PUA benefits in April 2020 so that she can establish an entitlement to PUA benefits for week 14-20. However, the evidence on that issue is equally balanced. Because the Department did not pay claimant benefits for week 14-20, claimant has the burden prove that the Department should have paid benefits for that week. Where, as here, the evidence in the record is no more than equally balanced, the party with the burden of persuasion—here, claimant—fails to meet their evidentiary burden. *State v. James*, 339 Or 476, 123 P3d 251, 255-256 (2005). Claimant has therefore failed to meet her burden to show that she was eligible for PUA benefits for week 14-20.

For the above reasons, Claimant is eligible for PUA benefits for the weeks including December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21), but is not eligible for PUA benefits for week 14-20.

DECISION: Order No. 22-UI-183942 is affirmed.

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

DATE of Service: March 16, 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. 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

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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.

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