

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0259**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 4, 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 February 10, 2022, ALJ Frank conducted a hearing, and on February 17, 2022 issued Order No. 22-UI-186782, affirming the May 4, 2021 administrative decision. On February 21, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) On June 8, 2020, claimant filed an initial claim for PUA benefits with the Department.

(2) Claimant claimed PUA benefits for the weeks including December 27, 2020 through April 17, 2021 (weeks 53-20 through 15-21), April 18, 2021 through April 24, 2021 (week 16-21), and May 2, 2021 through May 22, 2021 (weeks 18-21 through 20-21). These are the weeks at issue. The Department paid claimant benefits for weeks 53-20 through 15-21. The Department did not pay claimant benefits for week 16-21 or weeks 18-21 through 20-21.

(3) The Department did not pay claimant benefits for week 16-21 or weeks 18-21 through 20-21 because the Department required claimant to provide documentation to substantiate his employment or self-employment. At some point after claimant filed his initial claim for PUA benefits, claimant submitted documentation that he intended to serve as proof of employment or self-employment. However, the Department determined the documentation was insufficient because it was missing address and phone number information for the persons for whom claimant was performing services and information regarding the time period when the services were performed.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-186782 is set aside and this matter remanded for further development of the record.

Under the CARES Act Pub. L. 116-136, 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). The Act defines a “covered individual” as an individual who (1) 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” and (2) self-certifies that they are either “otherwise able to work and available to work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because” of one of eleven reasons related to the COVID-19 pandemic, or “is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment” and is rendered unemployed or unavailable to work because of one of the eleven listed reasons. Pub. L. 116-136, § 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 for Unemployed Workers Act of 2020 (“CAA”),<sup>1</sup> 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. Further, “States must notify . . . individuals filing PUA continued claims on or after December 27, 2020 . . . of the requirement to provide documentation to substantiate their employment or self-employment. Such notice must include the applicable deadline and the ability to show good cause on or before the deadline for extending such deadline, and the disqualification for failure to provide required documentation, including the potential for an overpayment of benefits paid.” UIPL 16-20, Change 4 at I-12.

The order under review concluded that claimant was not eligible for PUA benefits for the weeks at issue because he did not provide documentation substantiating his employment or self-employment. Order No. 22-UI-186782 at 3. The record as developed does not support this conclusion.

The record shows that claimant filed his PUA application on June 8, 2020 and therefore had an existing PUA claim as of December 27, 2020. The record also shows that claimant received PUA benefits after December 27, 2020 because claimant was paid PUA benefits for the weeks including December 27, 2020 through April 17, 2021 (weeks 53-20 through 15-21). Thus, the substantiation requirement established by section 2102(a)(3)(A)(iii) of the CARES Act (as amended by Section 241(a) of the CAA) applies to claimant. As such, he was required to provide documentation substantiating his employment

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<sup>1</sup> The Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 was signed into law on December 27, 2020.

or self-employment within 90 days of his PUA application date or the date he was instructed to provide such documentation by the Department, whichever date was later.

Based on the documentary evidence admitted at hearing, at some point after claimant filed his initial claim for PUA benefits, possibly as late as January 2022, claimant submitted documentation that he intended to serve as proof of employment or self-employment. Exhibit 2 at 2. The documentation consists of hand-written notes and calendar pages, some income tax forms, and at least one affidavit. Exhibit 2 at 43-66, 96. Federal guidance lists acceptable materials as including, but not being 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. As such, claimant’s documentation may amount to acceptable proof of employment or self-employment so long as claimant submitted it timely.

Remand is necessary to develop the record in order to assess whether or not claimant met the substantiation requirement and, therefore, whether or not he is ineligible for PUA benefits for the weeks at issue (weeks 53-20 through 15-21, 16-21, and 18-21 through 20-21). This is because it is not evident from the record when the deadline was for claimant to provide the documentation substantiating employment or self-employment. The existing record is insufficient to identify the deadline because it is unknown when, if ever, the Department instructed claimant to provide the documentation, or, if it did, whether 90 days from that date would be later than 90 days from the date of claimant’s June 8, 2020 PUA application date. Neither is it evident from the record when claimant actually provided the documentation he intended to serve as proof of employment or self-employment. On remand, the ALJ should inquire when, if ever, the Department notified claimant of the requirement to provide documentation to substantiate his employment or self-employment. The ALJ should also ask questions to determine the date or dates claimant provided the documentation he intended to serve as proof of employment or self-employment to the Department. Further, it remains unclear whether the materials claimant submitted are acceptable to establish proof of employment or self-employment, as the Department’s witness testified that the materials were missing address and phone number information for the persons for whom claimant was performing services and the time period when the services were performed. Transcript at 6. On remand, the ALJ should ask the Department witness to explain in more detail why and how the Department believes the materials claimant provided were not acceptable.

Finally, at hearing, claimant subjected the ALJ to abuse by repeatedly referring to the ALJ as “disgusting.” Transcript at 12. Such abusive language is unacceptable and will not be condoned on remand. Claimant is cautioned to treat the ALJ and all hearings participants with civility and respect. Given claimant’s abusive behavior during the February 10, 2022 hearing, it is recommended that the Office of Administrative Hearings assign a different ALJ to conduct the hearing on remand.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was eligible for PUA benefits during the weeks at issue, Order No. 22-UI-186782 is reversed, and this matter is remanded.

**DECISION:** Order No. 22-UI-186782 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: April 25, 2022**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-186782 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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.

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