

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0543

Reversed & Remanded

PROCEDURAL HISTORY: On February 2, 2022, 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 27, 2020 because she failed to prove acceptable proof of employment or self-employment within the required period. Claimant filed a timely request for hearing. On March 15, 2022, ALJ Scott conducted a hearing, continued to March 29 and April 18, 2022,¹ and on April 25, 2022 issued Order No. 22-UI-192109, affirming the February 2, 2022 PUA determination. On May 7, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a document submitted by claimant in support of this appeal that purports to be a notarized proof of employment, excerpts from the March 15, 2022 and April 1, 2022 notices of hearing, and claimant's application for review and the envelope she used to submit the application for review. The notarized proof of employment document has been marked as EAB Exhibit 1 and the remaining documents marked as EAB Exhibit 2, and copies of the exhibits provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or 2 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 exhibit(s) will remain in the record.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

¹ Claimant failed to appear at the April 18, 2022 and April 25, 2022 continued hearings.

FINDINGS OF FACT: (1) On March 29, 2021, claimant filed an initial claim for PUA benefits with the Department.

(2) Claimant claimed PUA benefits for the weeks from February 2 through March 7, 2020 (weeks 06-20 through 10-20), May 10 through June 6, 2020 (weeks 20-20 through 23-20), June 28 through July 25, 2020 (weeks 27-20 through 30-20), August 2 through October 31, 2020 (weeks 32-20 through 44-20), and December 6, 2020 through September 4, 2021 (weeks 50-20 through 35-21). Those are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue² because the Department required claimant to provide documentation to substantiate her planned commencement of employment or self-employment.

(3) At some point after claimant filed her initial claim for PUA benefits, claimant submitted a notarized proof of employment (POE) document from a prospective employer that was an attempt by claimant to substantiate her planned commencement of employment. The Department determined that the document was insufficient because it failed to state an expected start date for the planned employment to commence. Claimant obtained an amended version of the POE document which included her expected start date, then attempted to resubmit the amended POE document to the Department. The Department did not receive claimant's amended POE document.

(4) On March 15, 2022, ALJ Scott conducted a hearing at which claimant and a Department representative appeared. The Department's representative stated that if claimant resubmitted the amended POE document to the Department, the Department would be able to "move forward" with her PUA claim. March 15, 2022 Transcript at 8, 13. The ALJ continued the hearing until March 29, 2022 to allow claimant time to resubmit the document, and advised claimant that she would receive another notice of hearing reflecting the March 29, 2022 hearing date.

(5) On March 15, 2022, the Office of Administrative Hearings (OAH) mailed notice of a continued hearing scheduled for March 29, 2022 at 9:30 a.m. The notice of hearing was mailed to claimant at an address in The Dalles, Oregon that began with the numbers "6502." EAB Exhibit 2 at 2.

(6) On March 29, 2022, claimant failed to appear at the continued hearing. The ALJ continued the hearing until April 18, 2022 to allow claimant more time to resubmit the amended POE document to the Department, notwithstanding her failure to appear.

(7) On April 1, 2022, OAH mailed notice of a continued hearing scheduled for April 18, 2022 at 9:30 a.m. The notice of hearing was mailed to claimant at an address in The Dalles, Oregon that began with the numbers "6502." EAB Exhibit 2 at 4.

(8) At some point prior to April 18, 2022, claimant resubmitted the amended POE document to the Department. The amended POE document included the expected start date for the planned employment to commence; however, the start date information was "handwritten" on the amended POE document and did not include a new notarization for the handwritten information. April 18, 2022 Transcript at 7.

² 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.

(9) On April 18, 2022, claimant failed to appear at the continued hearing.

(10) On May 7, 2022, claimant mailed a timely application for review Order No. 22-UI-192109 with EAB. Both the application for review and the return address on the envelope claimant used to mail her application for review reflected her address as beginning with the numbers “6205,” and not the numbers “6502.” EAB Exhibit 2 at 5-6.

CONCLUSIONS AND REASONS: Order No. 22-UI-192109 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”),³ requires individuals to submit documentation to substantiate their employment or self-employment, or 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 “[i]ndividuals filing a new PUA application on or after January 31, 2021 (regardless of whether the claim is backdated), are required to provide documentation within 21 days of application or the date the individual is directed to submit the documentation by the State Agency, whichever 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-9-10. As relevant to this case, acceptable proof of planned commencement of employment includes, but is not limited to, “statements/affidavits by individuals (with name and contact information) verifying an offer of employment.” UIPL 16-20, Change 4 at I-10-11. If an individual fails to submit such documentation within the required timeframe, they are not eligible for PUA. UIPL 16-20, Change 4 at I-11.

The order under review concluded that claimant was not eligible for PUA benefits for the weeks at issue because she failed to provide the POE document, in notarized form, to the Department as of the April 25, 2022 date that Order No. 22-UI-192109 was issued. Order No. 22-UI-192109 at 4. Implicit in the order’s finding was that not only had claimant not provided the notarized document to the Department during the interim between the hearings in this case, but also that claimant had failed to appear at both the March 29, 2022 and April 18, 2022 hearings, such that she could explain her failure to provide the documentation. The record as developed does not support those conclusions.

³ 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.

On remand, further inquiry is needed to determine whether claimant provided acceptable proof to substantiate her planned commencement of employment, such that she should be eligible for PUA benefits. The record reflects that claimant initially provided a notarized POE document to the Department from her prospective employer in an attempt to comply with the substantiation requirement, but was informed by the Department that the POE document was insufficient because it failed to show claimant's expected start date with the prospective employer. Claimant obtained an amended version of the POE document, which included her expected start date written in by hand, but did not include a new notarization for the handwritten portion. Claimant then resubmitted the amended POE document but the Department had not received the amended POE document prior to the March 15, 2022 hearing.

During the March 15, 2022 hearing, the Department's witness engaged in a search of the Department's records, while the hearing was ongoing, and located claimant's initially submitted POE document. Specifically, the Department's witness testified, "[Y]eah, we have it, but it – it's really blurry, and it does not have the start date, so that's the old one." March 15, 2022 Transcript at 7. The proceedings were continued until March 29, 2022 and then April 18, 2022 so that claimant would have the opportunity to resubmit the amended POE document to the Department and claimant's PUA claim for benefits could "move forward."

Claimant did not appear at either of the subsequent hearings. However, the record reflects a discrepancy between the address to which OAH sent the relevant notices of hearing and the address that claimant listed as her return address when she submitted her application for review. Specifically, OAH sent the respective notices of hearing to claimant at an address that began with the numbers 6502, but claimant mailed her application for review to EAB in an envelope with a return address that began with the number 6205. *Compare* EAB Exhibit 2 at 2, 4 *with* EAB Exhibit 2 at 5-6. Notwithstanding, the Department's witness testified at the April 18, 2022 hearing that although claimant's initial POE document was notarized, "it was missing [the expected start date], and then it was resubmitted - but . . . it was handwritten, after the notarization, so we needed documentation with the [expected start date] and that page to be notarized." April 18, 2022 Transcript at 7. In other words, the Department's position was that although claimant made an effort to resubmit the amended POE document after the March 15, 2022 hearing, the amended POE document was insufficient because, although information establishing the expected start date of claimant's employment had been added, this additional information had not, itself, been notarized.

Because the record includes neither claimant's initial POE document, nor her amended POE document, on remand it will be necessary to determine whether EAB Exhibit 1 is in fact the amended POE document. Assuming EAB Exhibit 1 and the amended POE document are one and the same, further inquiry is needed to determine whether EAB Exhibit 1 constituted acceptable proof to substantiate claimant's planned commencement of employment, such that she should be eligible for PUA benefits for the weeks at issue. In this regard, and given that the federal guidance states that acceptable proof would include "*statements/affidavits* by individuals (with name and contact information) verifying an offer of employment," inquiry on remand should address whether claimant's amended POE required notarization given that it could be viewed as constituting such a statement. If it is determined that a second notarization was needed for the hand-written portions that were added to the document, further inquiry should address whether the lack of this second notarization invalidated the entire POE document or just the handwritten portions.

Likewise, further inquiry should clarify the efforts made by the Department to make contact with claimant's prospective employer given that a February 9, 2022 entry in the Department's records suggests that the prospective employer contacted the Department and stated that claimant was scheduled to commence employment but the job fell through due to the pandemic.⁴ In light of these circumstances, and because the record also shows that claimant may have been deprived of a reasonable opportunity to appear at the March 29, 2022 and April 18, 2022 hearings due to confusion over her correct mailing address, remand is appropriate.

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-192109 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-192109 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 27, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-192109 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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⁴ 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.



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 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.

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