

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0741

Reversed & Remanded

PROCEDURAL HISTORY: On January 11, 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 6, 2020. Claimant filed a timely request for hearing. The Office of Administrative Hearings (OAH) scheduled a hearing on the January 11, 2022 PUA Determination for February 22, 2022 at 2:30 p.m. On February 22, 2022, claimant failed to appear at the hearing, and on February 23, 2022, ALJ Frank issued Order No. 22-UI-187085, dismissing the hearing request on the January 11, 2022 PUA Determination due to claimant's failure to appear. On March 10, 2022, claimant filed a timely request to reopen the February 22, 2022 hearing. On April 14, 2022, OAH mailed claimant a letter stating that OAH had erroneously failed to mail notice of the February 22, 2022 hearing to claimant, that Order No. 22-UI-187085 was vacated, and that a new hearing would be scheduled. On June 13, 2022, ALJ Frank conducted a hearing, and on June 22, 2022 issued Order No. 22-UI-196542, affirming the January 11, 2022 administrative decision by concluding that claimant was not entitled to PUA benefits for the weeks including March 15, 2020 through May 8, 2021 (weeks 12-20 through 18-21). On June 29, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) On August 18, 2021, the Department sent notices to all individuals who had claimed PUA benefits, advising that the PUA program was scheduled to expire on September 4, 2021 and that claimants had until October 6, 2021 to file an initial application and weekly continued claims for PUA benefits. The Department did not send this notice to claimant because, as of August 18, 2021, she had not claimed PUA benefits.

(2) Claimant worked as a childcare provider. She believed she was eligible for PUA benefits because she thought the COVID-19 pandemic had rendered her unable to work. Claimant understood that the PUA program was set to expire on September 4, 2021 and thought that date was the deadline to file a claim for PUA benefits.

(3) On August 30 and September 1, 2021, claimant filed weekly continued claims for PUA benefits for the weeks including March 15, 2020 through June 26, 2021 (weeks 12-20 through 25-21). When claimant uploaded her weekly continued claim forms to the Department's system, the claims system did not notify her that the Department also required her to file an initial application for PUA benefits. Claimant believed that "answering the 30 questions on each claim" when she filed her weekly continued claims constituted an application. Transcript at 13.

(4) In early December 2021, claimant contacted the Department to inquire about the status of her PUA claim, and a representative informed her that she needed to also file an initial PUA application form. On December 10, 2021, claimant filed an initial PUA application form with the Department.

(5) A group of employees or managers within the Department called the Barrier Review Committee reviewed claimant's December 10, 2021 initial PUA application.¹ On January 4, 2022, the committee concluded that claimant did not have a barrier preventing her from filing her initial PUA application by October 6, 2021. As a result, the Department determined that claimant did not have a valid PUA claim and did not pay claimant PUA benefits for weeks 12-20 through 25-21.²

CONCLUSIONS AND REASONS: Order No. 22-UI-196542 is set aside, and this matter remanded for further proceedings consistent with this order.

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). On September 6, 2021, the temporary unemployment benefit programs authorized under the CARES Act, including PUA, expired. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 14-21, Change 1 (July 12, 2021) at 1. Per federal guidance, as applicable here, states were required to accept new PUA applications for 30 days after the date of program expiration, which was October 6, 2021. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 6 (September 3, 2021) (UIPL 16-20, Change 6), at 11. Further, such claims must be backdated, as appropriate, to the first week during the Pandemic Assistance Period in which the individual was unemployed because of approved COVID-19

¹ EAB has taken notice of these facts, which are 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.

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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.

related reasons, subject to the limitations on backdating required under the Continued Assistance Act (CAA). UIPL 16-20, Change 6 at 11.³

The order under review concluded that claimant was not eligible for PUA benefits for the weeks including March 15, 2020 through May 8, 2021 (weeks 12-20 through 18-21) because she did not file her initial application for PUA benefits by October 6, 2021. Order No. 22-UI-196542 at 3. The record as developed does not support this conclusion.

As a preliminary matter, further development of the record is necessary to clarify which are the actual weeks at issue in this case. At hearing, the witness for the Department initially testified that claimant claimed PUA benefits for the weeks including March 15, 2020 through May 8, 2021 (weeks 12-20 through 18-21). Transcript at 6. However, the ALJ admitted into evidence a continued claim form, filed by claimant, that pertained to the week of June 20, 2021 through June 26, 2021 (week 25-21). Exhibit 1 at 6. Under additional questioning, the Department representative testified that claimant submitted continued claims through that week. Transcript at 11. The Department representative later confirmed there were no gaps in the continued claim series between weeks 12-20 and 18-21 but did not deny that the weeks at issue also included weeks 19-21 through 25-21. Transcript at 18. Further, a comment included in Department records dated February 10, 2022 suggests that the Department keyed in PUA continued claims forms which claimant had submitted for the weeks including March 15, 2020 through July 3, 2021.⁴ On remand, the ALJ should ask questions of the parties to confirm that the weeks at issue are weeks 12-20 through 25-21. As part of this inquiry, the ALJ should inquire of the witness for the Department to thoroughly check the Department's records, including comments.

Turning to the issue of claimant's initial application for PUA benefits, pursuant to federal guidance, the Department was required to accept claimant's initial application for PUA benefits until at least 30 days after the date of program expiration, which was October 6, 2021. Here, however, the Department would have accepted claimant's initial application for PUA benefits even after the October 6, 2021 deadline had it concluded there was a barrier preventing claimant from filing. Because the applicable guidance documents specify that states are required to accept initial PUA applications until October 6, 2021 but do not specifically bar accepting them at a later date, it appears that accepting initial PUA applications after the October 6, 2021 deadline—as the Department would have done in this case had it found a barrier—is not prohibited.

Further development of the record is necessary, however, because it is not evident from the record whether claimant's continued claim forms, which were filed before the October 6, 2021 deadline, could be deemed the functional equivalent of an initial application for PUA benefits such that claimant would

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. Specifically, where an individual files their PUA application after December 27, 2020 the claim may be backdated to an effective date no earlier than December 6, 2020, meaning that weeks earlier than December 6, 2020 are not payable in that scenario. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) at I-18-19.

⁴ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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.

be considered to have filed her initial application before the deadline. To this end, the ALJ should inquire what the essential elements are of an initial application for PUA benefits and ask whether claimant's continued claim forms provided this information. If they did not, the ALJ should inquire what information was missing that would have been contained in the initial application for PUA benefits that was not contained in the continued claim forms. The ALJ should also inquire whether there is any regulation that prevents the department from treating a weekly certification as an initial application or backdating an initial application in circumstances such as this. Further, the ALJ should inquire why, particularly in light of the imminent expiration of the PUA program, the Department accepted claimant's continued claim forms without notifying her of the requirement that she also file an initial application for PUA benefits by October 6, 2021.

Development of the record is also necessary to determine what standard the Department applied to determine that claimant did not have a barrier sufficient to justify accepting her December 10, 2021 initial application for PUA benefits. On remand, the ALJ should inquire as to what administrative rule, internal memoranda, federal guidance or other U.S. Department of Labor requirement, settlement agreement, or similar source of authority actually establishes the standards applied by the barrier committee, and once identified, urge the Department representative to offer a copy of that authority as an exhibit. Next, the ALJ should ask questions to determine what the precise legal standards are that govern whether a barrier exists. The ALJ should also ask questions to determine whether there could be any point in time after the October 6, 2021 deadline in which claimant's initial application for PUA benefits would be unacceptable, even where the Barrier Committee determined a barrier to filing did exist. Once a record is made of the legal standard that governs whether a barrier exists, the ALJ should ask any additional questions about the circumstances claimant faced that are necessary to conduct the barrier analysis adequately. Because the ALJ's inquiry on remand will require detailed testimony about the nature and extent of the Department's barrier analysis, the Department is encouraged to assign a representative to appear at the hearing on remand who is well versed in the barrier committee and the standards it applies.

Following the above questioning, the ALJ should ask questions to assess, on a week-by-week basis, whether claimant met the eligibility criteria to receive PUA benefits for the weeks claimed.

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 is eligible to receive PUA benefits for the weeks at issue, Order No. 22-UI-197528 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-196542 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: September 29, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-196542 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.