

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0887**

*Reversed*

*Eligible for Pandemic Unemployment Assistance Weeks 19-20 through 25-20*

**PROCEDURAL HISTORY:** On April 6, 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 for the weeks including May 3, 2020 through June 20, 2020 (weeks 19-20 through 25-20). Claimant filed a timely request for hearing. On June 2, 2022, ALJ Monroe conducted a hearing, and on July 25, 2022, issued Order No. 22-UI-198944, affirming the April 6, 2022 administrative decision. On August 11, 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. To the extent claimant asserted that the hearing proceedings were unfair or the ALJ was biased in her written argument, EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) On July 13, 2020, claimant filed an initial application for PUA benefits with the Department. The Department's records show the initial application as blank.

(2) The Department had an error in the spelling of the claimant's last name. The claimant had multiple contacts with the Department before the error was resolved. The spelling error was corrected in the Department's computer system on June 23, 2021 when claimant was able to obtain assistance from the Department to file a second initial application for PUA benefits. At that time, a representative for the Department assisted claimant by filing the weekly certifications on claimant's behalf. Claimant believed weeks 13-20 through 25-20 were keyed into the system at that time by the representative. Claimant did not personally file the weekly certifications.

(3) The Department determined that claimant had a valid claim for PUA benefits with a first effective week of March 15, 2020. The Department has record of weekly continued claims filed for the weeks including March 22, 2020 through May 2, 2020 (weeks 13-20 through 18-20). The Department paid claimant benefits for these weeks. The Department does not have record that weekly continued claims

were filed on behalf of claimant when the second initial PUA application was filed on June 23, 2021 for weeks 19-20 through 25-20 and does not have record the weeks at issue were filed until January 27, 2022. These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) On August 18, 2021, the Department had a mailing campaign to give notice to participants that the PUA program was set to expire on October 6, 2021.

(5) On October 5, 2021, the Department specifically sent claimant a letter to notify claimant that the PUA program was ending the next day, but that the Department would honor certifications for 21 days after the October 6, 2021 deadline.

(6) On October 5, 2021, claimant called the Department and, with the assistance of a Department representative, filed her weekly continued claim forms for the weeks including May 3, 2020 through June 20, 2020 (weeks 19-20 through 25-20). The Department found notes reflecting that on January 27, 2022 the weekly certifications for weeks 19-20 through 25-20 were taken by a representative. The Department's records show that the certifications were marked as received between February 4 and March 14, 2022.

(7) The Department did not allow PUA benefits to be paid for weeks filed after the October 6, 2021 deadline, unless the Department's Barrier Review Committee determined there was a "barrier" and allowed benefits to be paid after the deadline.

(8) At some point, the Department's Barrier Review Committee approved that claimant had a barrier stating "Claimant couldn't get through, and wrote a letter because name was spelled incorrectly at this time, and it was impossible to get through on the phones." Transcript at 8.

(9) On April 6, 2022, the Department sent claimant a Notice of Determination for Pandemic Unemployment Assistance (PUA) that claimant was not eligible for PUA benefits for the weeks of May 3, 2020 through June 20, 2020 because claimant did not file her weekly claims before the deadline of October 6, 2021 and the barrier review committee did not find reasonable cause preventing a certification from being submitted.

**CONCLUSIONS AND REASONS:** Claimant is eligible to receive PUA benefits for weeks 19-20 through 25-20.

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. 15 U.S.C. § 9021, Pub. L. 116-136, § 2102(b). On March 11, 2021, Congress enacted the American Rescue Plan Act of 2021 (ARPA), Pub. L. 117-2, which authorized a maximum of 79 weeks of PUA benefits payable to covered individuals and called for the expiration of the PUA program effective September 6, 2021.

For states in which a week of unemployment ends on a Saturday, such as Oregon, the last payable week of PUA is the week ending September 4, 2021 (week 35-21). 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. "PUA may not be paid for any weeks of unemployment ending after September 6, 2021, though payment for weeks of unemployment ending before September 6, 2021, may occur at a later date." UIPL

16-20 Change 6 at II-2. As applicable here, federal guidance requires that states “must accept continued claim forms for 21 days after . . . the program expiration date[.]” UIPL 16-20 Change 6 at II-2. Thus, in this case, pursuant to UIPL 16-20 Change 6 at II-2, the Department was required to accept claimant’s weekly continued claims for the weeks at issue until at least 21 days after the expiration of the PUA program, which was September 27, 2021.

Here, however, the Department imposed a deadline of 21 days after October 6, 2021 for claimant to submit her weekly continued claims for PUA benefits. Transcript at 7. Because federal guidance specifies that payment of PUA benefits for the weeks ending before September 6, 2021 may occur at a later date, the Department was not prohibited from imposing a deadline later than September 27, 2021 to accept claimant’s PUA continued claim forms. *See* UIPL 16-20 Change 6 at II-2. Therefore, the Department had the latitude to use the deadline of October 6, 2021 and to accept weekly continued claims for 21 days after the October 6, 2021 deadline.

The order under review concluded that claimant was not eligible to receive PUA benefits for the weeks at issue because she submitted her continued claims for those weeks on January 27, 2022 and, therefore, did not submit her continued claims for those weeks by the October deadline. Order No. 22-UI-198944 at 4. The record does not support this conclusion.

The record shows that on October 5, 2021, claimant called the Department and with the assistance of a Department representative, submitted her continued claim forms for the weeks at issue. At hearing, claimant testified that all of her weekly certifications were done over the phone with the assistance of Department representatives. Transcript at 25, 27. On May 21, 2021, June 23, 2021, and October 5, 2021 claimant “talked with somebody” and that person “asked me the questions, on these weeks, and then I answered ‘em, and then that’s when it said everything went through[.]” Transcript at 20-21. Claimant initially believed all of the weekly claims were submitted with her second initial PUA application. It is unclear from the record why all of the certifications were not completed on behalf of the claimant on that date. Claimant also testified that on October 5, 2021, she “talked to somebody” and that “making the claim” was the purpose of that call. Transcript at 21, 25, 26.

By contrast, the Department’s witness initially testified that Department records show weekly certifications for the weeks at issue were submitted after the deadline, between February and March 2022. Upon further review during the hearing, the witness located notes showing the certifications were filed on January 27, 2022, by a Department representative and were entered into the system in February and March 2022. Transcript at 29. However, the Department witness also indicated that he did not review all of the databases for contacts with the claimant stating, “I would have to look that up in another database, Your Honor. I didn’t go to the phone calls. I was looking at the conversations that were recorded in-in mainframe, that were phone conversations there. I didn’t listen to the actual phone calls.” Transcript at 29. Accordingly, it is possible there are additional records of contacts between the Department and claimant in other databases that were not reviewed. As a result, claimant’s testimony that her continued claims for the weeks at issue were submitted on October 5, 2021 went un rebutted.

Moreover, the Department’s witness was unable to reconcile the Barrier Review Committee’s determination that the claimant did have a barrier to filing timely certifications with the PUA determination finding that the Barrier Review Committee determined that claimant did not have a barrier. Presumably, there are notes that were not located in the record at the time of the hearing

showing a second determination was made by the Barrier Review Committee in accordance with the PUA determination. Accordingly, the weight of the evidence on this record supports that claimant submitted her continued claims for the weeks at issue before the Department's deadline. As a result, claimant met her burden to prove that she submitted her continued claim forms for the weeks at issue by the October deadline.<sup>1</sup>

Because claimant submitted her continued claim forms for the weeks of May 3, 2020 through June 20, 2020 (weeks 19-20 through 25-20) by the October 6, 2021 deadline, claimant is eligible to receive PUA benefits for those weeks.

**DECISION:** Order No. 22-UI-198944 is set aside, as outlined above.

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

**DATE of Service:** November 18, 2022

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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.

---

<sup>1</sup> Because the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden to establish by a preponderance of the evidence that benefits should have been paid. See *Nichols v. Employment Division*, 24 Or. App 195, 544 P.2d 1068 (1976).



# 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)

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.