

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0926

Reversed

Eligible for Pandemic Unemployment Assistance Weeks 29-21 and 30-21

PROCEDURAL HISTORY: On August 13, 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 complete the identity verification process. Claimant filed a timely request for hearing. On January 25, 2022, the Department mailed claimant a letter stating that the August 13, 2021 administrative decision was issued in error, that claimant was eligible to receive PUA benefits for weeks prior to July 18, 2021 despite not completing the identity verification process, and that the August 13, 2021 administrative decision was cancelled. On February 17, 2022, the Department served a document stating that claimant's request for hearing was dismissed because the January 25, 2022 letter had cancelled the August 13, 2021 administrative decision and resolved all issues. On August 10, 2022, ALJ Meerdink conducted a hearing, and on September 6, 2022 issued Amended Order No. 22-UI-202135¹ concluding that the Department erred in dismissing claimant's request for hearing because the January 25, 2022 cancellation letter had not resolved all issues, and modifying the August 13, 2021 administrative decision by concluding that claimant was not eligible for PUA benefits for the weeks from July 18 through 31, 2021 (weeks 29-21 through 30-21). On September 1, 2022, claimant filed an application for review of Order No. 22-UI-200746 with the Employment Appeals Board (EAB), which EAB treated as an application for review of Amended Order No. 22-UI-202135.

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 him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (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.

¹ Amended Order No. 22-UI-202135 amended Order No. 22-UI-200746, which ALJ Meerdink had issued on August 17, 2022, but which contained typographical errors relating to the weeks the order concluded claimant was not eligible to receive benefits. See Order No. 22-UI-200746 at 4. Amended Order No. 22-UI-202135 corrected these typographical errors. See Amended Order No. 22-UI-202135 at 1 n.1, 4.

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 the Department erred in dismissing claimant's request for hearing because the January 25, 2022 cancellation letter had not resolved all issues is **adopted**. The remainder of this decision relates to claimant's eligibility for PUA benefits for weeks 29-21 and 30-21.

FINDINGS OF FACT: (1) On January 27, 2021, claimant filed an initial claim for PUA benefits. Thereafter, claimant claimed and received PUA benefits for numerous weeks between January 2021 and mid-July 2021.

(2) Federal law required state agencies to verify the identities of claimants who applied for PUA benefits after January 26, 2021. The Department elected to use a third party vendor, called "ID.Me," to conduct identity verifications of PUA claimants. Transcript at 10.

(3) The ID.Me identity verification process involved using a digital camera or smart phone to take a self-portrait photograph, and uploading a variety of identifying documents through the internet. The process could also involve video verification whereby an individual would be required to meet with an ID.Me agent on a video teleconferencing platform via webcam. Uploading documents and teleconferencing typically required use of a high-speed internet connection.

(4) Claimant did not have a cell phone digital camera, webcam, or access to high-speed internet. Although it was possible for claimant to go to a WorkSource office and use a computer there, claimant was over 65 years old and concerned about person-to-person contact at a WorkSource office due to the risk of COVID-19 infection. Claimant also had hyperacusis combined with tinnitus, conditions that caused him to have an abnormal sensitivity to sound and made it difficult for him to be in a place that had the potential to be noisy, like a government office.

(5) Claimant was unable to complete the ID.Me process at home because he lacked the required equipment and access to high-speed internet. Because of his age and disabilities, claimant did not feel safe going to a WorkSource office to complete the ID.Me process.

(6) Claimant contacted the Department by telephone several times for assistance in completing the ID.Me process. On one occasion, a Department representative gave claimant the number for a Department line dedicated to assisting claimants who had difficulty completing the ID.Me process. If contacted through this phone line, a Department representative would determine whether claimant was eligible for manual identity verification. If so, the Department representative would personally conduct the identity verification. However, the process would still require claimant to submit a digital photograph of himself, as well as other documentation. Claimant did not call the phone line because he did not have the means to submit a digital photograph of himself.

(7) The Department advised claimant to complete the ID.Me process by July 12, 2021. Claimant did not do so. Thereafter, claimant claimed benefits for the weeks from July 18 through 31, 2021 (weeks 29-21 and 30-21), the weeks at issue. The Department did not pay claimant PUA benefits for the weeks at issue because he had not completed the ID.Me process.

(8) Prior to the weeks at issue, claimant established his identity by submitting to the Department copies of his 2020 income tax returns and 1099 nonemployee compensation form, his federal employer

identification number assigned to him by the Internal Revenue Service, and a canceled check to enable benefits funds to be deposited into his bank account directly. Claimant also submitted to the Department a signed letter by the executive director of the Medical Society of Metropolitan Portland, attesting to the fact that claimant was a freelance writer for the organization until it closed on December 31, 2020.

CONCLUSIONS AND REASONS: Claimant was eligible for PUA benefits for the weeks from July 18 through 31, 2021 (weeks 29-21 and 30-21).

Section 2102(f)(1) of the CARES Act, as amended by Section 242(a) of the Continued Assistance for Unemployed Workers Act of 2020 (“CAA”), requires state agencies to have an adequate system for administering the PUA program “including procedures for identity verification or validation . . . to the extent reasonable and practicable.” 15 U.S.C. § 9021(f)(1). States were required to have their identity verification procedures for PUA claimants in place by January 26, 2021. 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-12. Individuals filing new PUA initial claims after that date and who “have not been through the state’s identity verification process must have their identities verified to be eligible.” UIPL 16-20, Change 4 at I-12. For states administering benefits programs like PUA, federal guidance also instructs that “equitable access to unemployment benefits must be at the forefront of the decision-making process.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 6 (September 3, 2021) (UIPL 16-20, Change 6), at 4. Specifically, “[i]n the context of fraud management,” equitable access means, among other things, “that there are alternatives to digital mechanisms of identity proofing[.]” UIPL 16-20, Change 6 at 4.

The order under review concluded that claimant did not verify his identity or “follow up through available resources to determine” if he could verify his identity and that the Department therefore properly denied claimant PUA benefits for the weeks at issue. Amended Order No. 22-UI-202135 at 3. However, the record does not support this conclusion.

The record shows that claimant filed his initial claim for PUA benefits after January 26, 2021 and so was subject to the requirement to verify his identity to be eligible to receive PUA benefits. The record further shows that claimant failed to complete the ID.Me identify verification process because he lacked the required equipment and access to high-speed internet needed to complete the process at home. He also did not feel safe going to a WorkSource office because of his age-related concerns about COVID-19 exposure and his disabilities, and he did not pursue manual identity verification through a Department representative because it also required equipment he did not have.

Nevertheless, UIPL 16-20 Change 4 at I-12 requires merely that claimant’s identity be verified in order for claimant to be eligible for PUA benefits. Here, although it did not come via the ID.Me process, claimant submitted materials to the Department sufficient to verify his identity. Prior to the weeks at issue, claimant established his identity by submitting to the Department copies of his 2020 income tax returns and 1099 nonemployee compensation form, his federal employer identification number, a canceled check to enable benefits funds to be deposited into his bank account directly, and a signed letter by the executive director of the Medical Society of Metropolitan Portland, attesting to the fact that claimant was a freelance writer for the organization until it closed on December 31, 2020.

Taken together, the materials cited above show that claimant likely is who he says he is. While the ID.Me process is a procedure the Department elected to use to achieve identity verification, federal guidance requires only that claimant verify his identity to be eligible for PUA benefits, not that he strictly adhere to the Department's preferred method for doing so. Furthermore, to require strict adherence to ID.Me in this case would run counter to the instruction found in UIPL 16-20, Change 6 that "equitable access" to benefits be "at the forefront of the decision-making process," particularly as it relates to providing "alternatives to digital mechanisms of identity proofing[.]" UIPL 16-20, Change 6 at 4; *See also* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 02-16 (October 1, 2015) at 5-7, 11-12 (listing methods for improving access for individuals with disabilities, older individuals, and individuals who experience challenges with technology). Here, claimant was unable to complete the ID.Me process mostly because of his lack of access to digital technology and high-speed internet, and because the alternatives to digital mechanisms the Department offered either still required access to digital technology claimant did not have, or posed a risk of harm to claimant's health given his age and medical conditions. Given that claimant verified his identity through means other than the ID.Me process, and that the ID.Me process provided a degree of equitable access to claimant that was questionable, claimant met his burden to verify his identity and is entitled to receive PUA benefits for the weeks at issue.² Accordingly, claimant was eligible for PUA benefits for the weeks from July 18 through 31, 2021 (weeks 29-21 and 30-21).

DECISION: Order No. 22-UI-202135 is set aside, as outlined above.

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

DATE of Service: November 30, 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.

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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² *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (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).



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.

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