

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1257**

*Reversed*

*Not Ineligible for Pandemic Unemployment Assistance Weeks 50-20 through 25-21*

**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). On September 29, 2022, EAB issued EAB Decision 2022-EAB-0741, reversing and remanding the matter for further development of the record. On November 7, 2022 and continued on November 21, 2022, ALJ Frank conducted a remand hearing, and on November 29, 2022, issued Order No. 22-UI-208465, affirming the January 11, 2022 administrative decision by concluding that claimant was not entitled to PUA benefits for the weeks including December 6, 2020 through June 26, 2021 (weeks 50-20 through 25-21). On December 19, 2022, claimant filed an application for review of Order No. 22-UI-208465 with EAB.

**WRITTEN ARGUMENT:** EAB considered claimant’s written 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 end 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.

(3) Claimant was interested in pursuing a PUA claim but was confused by the process and not familiar with computers. In July 2021, claimant called the Department for guidance. A Department representative informed claimant that filing a PUA claim was a simple process and encouraged claimant to watch the videos available online and to communicate with the Department about PUA via the Department’s online portal. The representative did not mention that claimant needed to file an initial PUA application form in order to file a claim.

(4) 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 she did so, she created a profile on the Department’s portal that provided the Department with her name, home address, and email address. When claimant made her weekly claims, the Department sent her an email verification that her weekly claim forms were accepted. Claimant believed that “answering the 30 questions on each claim” when she filed her weekly continued claims constituted an application. June 13, 2022 Transcript at 13. Despite having claimant’s contact information, the Department never contacted claimant to inform her that it also required her to file an initial PUA application by October 6, 2021.

(5) In early December 2021, claimant contacted the Department because she had not received benefits. Claimant did so, and a representative informed her that she needed to file an initial PUA application form. On December 10, 2021, claimant filed an initial PUA application form with the Department.

(6) A group of managers within the Department called the Barrier Review Committee reviewed claimant’s circumstances to assess whether there was a barrier beyond her control sufficient in their view to accept claimant’s PUA initial application after October 6, 2021. To make this determination, the committee had “no official standards” and “there was no law that they were going by” but made these determinations as a courtesy. November 7, 2022 Transcript at 14. The committee “looked at” factors such as lack of technology, homelessness, hospitalization, disabilities, language barriers, and transportation issues. November 7, 2022 Transcript at 15. One scenario that the committee would treat as a barrier sufficient to accept a late filing is if a claimant could not get through to the Department over the phone during certain times.

(7) 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. On January 11, 2022, the Department mailed claimant a PUA determination stating that claimant was not entitled to PUA because “You did not file

an application on or prior to the deadline of October 6<sup>th</sup>, 2021 established by the Department of Labor; and the barrier review committee did not find reasonable cause preventing an application from being submitted.” Exhibit 1 at 1. The Department did not pay claimant PUA benefits for weeks 12-20 through 25-21.

**CONCLUSIONS AND REASONS:** Claimant was not ineligible to receive PUA benefits for the weeks including December 6, 2020 through June 26, 2021 (weeks 50-20 through 25-21).

To be eligible to receive PUA benefits, an individual must be a “covered individual” as that term is defined by the CARES Act, as amended. 15 U.S.C. § 9021(a)(3). On September 6, 2021, the unemployment benefits 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.

Claimant filed weekly claims for PUA in August and September 2021, but did not file her initial PUA application until December 10, 2021, after the October 6, 2021 deadline. The order under review concluded that claimant did not have a valid PUA claim because of her failure to file by October 6, 2021 and because the barrier committee did not find “reasonable cause” preventing the application from being submitted and therefore claimant was not eligible to receive PUA benefits for weeks 50-20 through 25-21. Order No. 22-UI-208465 at 3. The record does not support this conclusion.

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 that prevented claimant from filing by October 6, 2021. 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.

The record evidence supports the conclusion that claimant’s late PUA initial application should be accepted and claimant considered to have a valid PUA claim. The Department determined whether claimant had a sufficient barrier to allow the late initial application filing without following any “official standards” and the Department’s representative stated “there was no law that they were going by.” November 7, 2022 Transcript at 14. However, there were certain factors that the committee “looked at” including technological barriers and difficulty making phone contact with the Department. November 7, 2022 Transcript at 15. In the absence of more clearly articulated standards, more likely than not the claimant had a barrier preventing her from filing the initial application; the record shows that claimant was unfamiliar with technology, informed the Department of her confusion and lack of computer skills, the Department did not assist the claimant in filing the application on her behalf and instructed her to file on-line and use the on-line portal for communicating, despite the barrier and the claimant’s request for assistance.

Moreover, claimant could not have reasonably known that by filing her weekly certifications she did not meet the October 6, 2021 deadline. Claimant was confused by the process and unfamiliar with computers. When she called the Department in July 2021, the representative did not mention claimant was required to file an initial application and instruct her to do so, nor did they submit one on her behalf. Claimant then filed her weekly continued claims on August 31 and September 1, 2021, and thought that when she did so, they constituted the application. The Department accepted claimant's weekly claims, which amounted to over a year's worth of weekly claim forms, without prompting claimant to file an initial claim or otherwise giving any indication that the process was incomplete. The Department even sent claimant an email verifying receipt of her continued claims but failed to contact claimant about the required application, despite having claimant's contact information. Claimant first learned of the initial application requirement only after calling the Department in early December 2021 because she had not received benefits, and filed the application shortly thereafter. These facts show that claimant's late filing was due to a mistake that the Department prolonged, and for which she could not be blamed. This is sufficient to establish a barrier that prevented claimant from timely filing the initial application.

However, a PUA initial claim filed after December 27, 2020, is subject to limitations on backdating required under the Continued Assistance Act (CAA).<sup>1</sup> Section 201(f) of the CAA, requires that if an individual files their initial PUA application after December 27, 2020 the initial application may be backdated to an effective date no earlier than December 6, 2020. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021), at I-18-I-19. The effect of allowing backdating of the initial PUA claim to no earlier than December 6, 2020 is that PUA benefits for weeks that occurred prior to December 6, 2020 are not payable. *See* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 5, (February 25, 2021) at 13 ("For example, if an individual files a new PUA claim after [February 25, 2021] . . . absent a PUA claim already being on file and consistent with the Continued Assistance Act, the claim effective date may not be any earlier than December 1, 2020 (weeks of unemployment beginning on or after December 6, 2020), and *retroactive benefits may not be awarded prior to that date.*") (emphasis added).

Claimant claimed the weeks including March 15, 2020 through June 26, 2021 (weeks 12-20 through 25-21). Because she filed her initial claim after December 27, 2020, the earliest date it can be backdated to is week 50-20, the week beginning December 6, 2020. As a result, the weeks at issue in this case are the weeks including December 6, 2020 through June 26, 2021 (weeks 50-20 through 25-21).

To summarize, claimant is not ineligible to receive PUA benefits for weeks 50-20 through 25-21 on the basis of filing her initial application on December 10, 2021.

**DECISION:** Order No. 22-UI-208465 is set aside, as outlined above.

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

**DATE of Service:** February 16, 2023

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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.

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take a period of time 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](https://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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymizmo.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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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