

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0269**

*Affirmed*  
*Ineligible for PUA for Weeks 12-20 through 49-20*

**PROCEDURAL HISTORY:** On April 14, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits prior to December 6, 2020. On May 4, 2022, the April 14, 2022 PUA determination became final without claimant having filed a request for hearing. On May 9, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 8, 2022 issued Order No. 22-UI-200032, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 22, 2022. On August 22, 2022, claimant filed a timely response to the appellant questionnaire. On December 1, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-200032 was vacated and that a new hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of the April 14, 2022 PUA determination. On February 3, 2023, ALJ Janzen conducted a hearing, and on February 8, 2023 issued Order No. 23-UI-215307, allowing claimant's late request for hearing and affirming the April 14, 2022 PUA determination by concluding that claimant was not entitled to PUA benefits from March 15 through December 5, 2020 (weeks 12-20 through 49-20).<sup>1</sup> On February 28, 2023, claimant filed a timely application for review of Order No. 23-UI-215307 with the Employment Appeals Board (EAB). On March 7, 2023, ALJ Janzen issued Amended Order No. 23-UI-218101 that corrected a typographical error in Order No. 23-UI-215307. EAB construes claimant's application for review of Order No. 23-UI-215307 as an application for review of Amended Order No. 23-UI-218101.

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision. The issue in the case was whether claimant was subject to the prohibition on backdating PUA claims prior to week 50-20 because his initial PUA application was filed after December 27, 2020. *See* U.S. Dep't of

<sup>1</sup> The "Order" section of Order No. 22-UI-215307 stated that the April 14, 2022 PUA determination was affirmed but then stated, inconsistently, that "Claimant is entitled to receive PUA benefits[.]" Order No. 22-UI-215307 at 5. As it is obvious from the analysis of the order that it considered claimant to be ineligible for PUA benefits for weeks 12-20 through 49-20, it is presumed that the omission of the word "not" between "is" and "entitled" in the quoted phrase above was a typographical error. The ALJ subsequently issued an amended order on March 7, 2023 that corrected the error. *See* Amended Order No. 23-UI-218101 at 5.

Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021), at I-18–I-19. In his argument, claimant references the testimony of the Department’s witness in which the witness stated, “even if it was a blank application, a weekly certification or anything that we could find, we would have considered it for backdating – for being prior to that date [of December 27, 2020], but I don’t have anything.” Transcript at 35.

The ALJ left the record open to permit claimant to submit documentary evidence to support his assertion that he had filed a PUA initial application prior to December 27, 2020. Transcript at 35-38. Claimant submitted documents that the ALJ marked as Exhibit 3 and admitted into evidence. Order No. 23-UI-215307 at 1; Amended Order No. 23-UI-218101 at 1. The ALJ referenced the documents in the orders and noted that the documents did not establish that claimant filed an initial application for PUA before December 27, 2020. Order No. 23-UI-215307 at 5; Amended Order No. 23-UI-218101 at 5.

EAB reviewed the entire record in this case, including the documents claimant submitted. Only two documents included as part of Exhibit 3 date from 2020. One is a May 25, 2020 automatic reply email from the Department, in which the Department lists answers to commonly asked questions. May 25, 2020 Automatic Reply, Exhibit 3 at 1. The automatic reply email lists the commonly asked question, “I am self-employed or otherwise do not qualify for regular UI benefits; how should I filed a claim for benefits?” May 25, 2020 Automatic Reply Email, Exhibit 3 at 1. The automatic reply email provides the response “Please access the PUA application and certification forms on the CARES Act section of the Employment Department’s COVID-19 web page,” with the term “CARES Act” hyperlinked as though clicking on it would route the user to the referenced website. May 25, 2020 Automatic Reply Email, Exhibit 3 at 1. This email did not amount to an application for PUA or to a blank application or weekly certification form, which the Department witness suggested in her testimony might be treated as sufficient for backdating claimant’s PUA claim.

The other document that dates from 2020 is a June 14, 2020 auto-reply email advising that the inbox was no longer being monitored and claimant’s message would not be read. June 14, 2020 Auto-Reply Email, Exhibit 3 at 1. The auto-reply email urged claimant to contact the Department via a link to a “contact-us” form and provided a link to a frequently asked questions web page. June 14, 2020 Auto-Reply Email, Exhibit 3 at 1. This email also did not amount to an application for PUA or to a blank application or weekly certification form, which the Department witness suggested in her testimony might be treated as sufficient for backdating claimant’s PUA claim.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

**DECISION:** Order No. 23-UI-218101 is affirmed.

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

**DATE of Service:** April 11, 2023

**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.

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# 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**

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**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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