

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1323**

*Affirmed*

*Ineligible for PUA Weeks 15-20 and 16-20, 18-20 through 20-20, 22-20 through 33-20,  
35-20 through 43-20, and 45-20 through 53-20  
Eligible for PUA Weeks 01-21 through 16-21 and 18-21 through 27-21*

**PROCEDURAL HISTORY:** On September 21, 2023, 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 effective February 2, 2020. Claimant filed a timely request for hearing. On November 16, 2023, ALJ Mott conducted a hearing, and on November 17, 2023 issued Order No. 23-UI-241397, modifying the September 21, 2023 PUA determination by concluding that claimant was not eligible for PUA benefits for the weeks from April 5 through 18, 2020 (weeks 15-20 and 16-20), April 26 through May 16, 2020 (weeks 18-20 through 20-20), May 24 through August 15, 2020 (weeks 22-20 through 33-20), August 23 through October 24, 2020 (weeks 35-20 through 43-20), and November 1, 2020 through January 2, 2021 (weeks 45-20 through 53-20), but was eligible for PUA benefits for the weeks from January 3 through April 24, 2021 (weeks 1-21 through 16-21) and May 2 through July 10, 2021 (weeks 18-21 through 27-21). On December 6, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant’s written argument when reaching this decision.

Claimant’s written argument raised two concerns that merit discussion. First, claimant noted that the September 21, 2023 PUA determination denied claimant PUA benefits on the sole basis that he could “telework with pay,” and asserted that “[a]ny new or additional arguments or claims by OED should not have been allowed during the hearing because they are unrelated, and therefore not relevant, to the September 2023 administrative decision by the auditor.” Claimant’s Written Argument at 2–3. In so asserting, claimant essentially suggested that inquiry at hearing should have been limited to this original

basis for the denial of claimant's benefits. However, under the applicable administrative rules, the scope of review at hearing is broader than claimant asserts.

OAR 471-040-0025 (August 1, 2004) states, in relevant part:

- (1) The purpose of the hearing is to inquire fully into the matters at issue and to make a decision on the basis of the evidence adduced at the hearing.

\* \* \*

(8) In any hearing, **the administrative law judge shall render a decision on the issue and law involved as stated in the notice of hearing.** The administrative law judge's jurisdiction and authority is confined solely to the issue(s) arising under the Employment Department Law. Subject to objection by any party, the administrative law judge may also hear and enter a decision on any issue not previously considered by the authorized representative of the Director and which arose during the hearing. The administrative law judge may continue the hearing or remand the matter to the authorized representative for consideration and action upon such issue(s) under the provisions of ORS 657.265. However, in no event shall the administrative law judge accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.

(emphasis added). OAR 471-040-0015(1) (August 1, 2004) states, "To afford all parties a reasonable opportunity for a fair hearing, **notice of hearing setting forth the time, date, place, and issue(s) in general** shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director." (emphasis added).

The Notice of Hearing in this case stated, in relevant part:

The hearing is regarding the Administrative Decision(s) dated September 21, 2023. In addition to the jurisdictional issues which include, but are not limited to, valid appeal, timely appeal, and timely employer-appellant response to claim filing, the issue(s) to be considered are: Whether claimant is entitled to Pandemic Unemployment Assistance (PUA) under The Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act), Public Law (Pub. L.) 116-136.

October 12, 2023 Notice of Hearing at 1. The record does not indicate that claimant failed to receive the notice of hearing or otherwise lacked notice of the issues to be addressed at hearing. Therefore, the proper scope of review in this matter was a consideration of all factors contributing to claimant's eligibility for PUA under the CARES Act.

Claimant also appears to raise concerns that the partial denial of PUA benefits might result in an overpayment that he would be required to repay to the Department. Claimant's Written Argument at 4-5. Although claimant's concerns are understandable, the question of whether claimant is liable to repay benefits to the Department is a separate issue from the question of whether claimant met the criteria for PUA eligibility. Because that issue is not before EAB, EAB lacks jurisdiction to address it. Furthermore, the hearing record does not show that the Department has actually assessed an overpayment in

connection with this case. To the extent that the Department *does* assess claimant an overpayment for PUA benefits paid in error, claimant must request a separate hearing on any such overpayment administrative decision if he wishes to contest it. Claimant should also note that, in addition to a request for hearing, he may request a waiver of any overpayment the Department assesses. The Department includes information on both how to request a hearing on an overpayment, and how to request a waiver of an overpayment, with overpayment administrative decisions.

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-241397 is affirmed.

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

**DATE of Service:** January 18, 2024

**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**

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**  
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[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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