

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0032

Affirmed
*Ineligible for Pandemic Unemployment Assistance Weeks 15-20,
17-20 through 22-20, and 24-20 through 21-21*

PROCEDURAL HISTORY: On March 2, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits. Claimant filed a timely request for hearing. On November 30, 2023, ALJ Frank conducted a hearing, at which the Department submitted an Attestation in lieu of attending. On December 7, 2023, ALJ Frank issued Order No. 23-UI-242906, affirming the March 2, 2022, PUA determination. On December 27, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on December 27, 2023, December 28, 2023, and January 28, 2024. EAB considered claimant's December 27 and December 28, 2023, written arguments in reaching this decision. As to claimant's January 28, 2024, written argument, the 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 January 28, 2024, argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On April 7, 2020, claimant filed an initial claim for benefits under the regular unemployment insurance (regular UI) program. The Department determined that claimant had a monetarily valid claim for regular UI benefits with a first effective week of March 29, 2020, through April 4, 2020 (week 14-20).

(2) Claimant claimed regular UI benefits for week 14-20. The Department credited claimant with waiting week credit for that week.¹ For the next week, the week of April 5, 2020, through April 11, 2020

¹ The Department eventually paid claimant regular UI benefits for week 14-20. EAB has taken notice of this fact, which is contained in Employer Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten

(week 15-20), claimant did not file a claim for regular UI benefits. For the week that followed, the week of April 12, 2020, through April 18, 2020 (week 16-20), claimant filed a weekly claim for regular UI benefits.

(3) The Department did not initially pay claimant regular UI benefits for week 16-20. Rather, on April 28, 2020, the Department sent claimant a letter stating that because claimant did not claim regular UI benefits for week 15-20, there had been a break in reporting. The letter stated that due to the break in reporting, the Department would not pay claimant regular UI benefits for week 16-20 or the weeks that followed until claimant restarted his claim by filling out the letter and returning it to the Department or by calling the Department. Exhibit 4 at 219-220.

(4) Claimant attempted to call the Department numerous times to resolve the issue but could not reach a representative. Claimant's mother attempted to assist him in contacting the Department, but the Department would not discuss matters pertaining to claimant's regular UI claim with claimant's mother unless claimant authorized release of information to his mother. In July 2020, the Department paid claimant regular UI benefits for week 16-20, the week it had previously denied benefits based on claimant's break in reporting.

(5) Claimant eventually submitted to the Department a form authorizing release of information to his mother. Thereafter, claimant's mother discussed claimant's regular UI claim with Department representatives on multiple occasions. Many of these discussions centered on verifying claimant's identity. Some also involved claimant's potential eligibility for PUA benefits. During some of these conversations, Department representatives provided contradictory information regarding whether claimant would be eligible for PUA benefits.²

(6) Prior to September 24, 2021, claimant did not file any weekly claims for benefits under his regular UI claim other than for weeks 14-20 and 16-20.

(7) Typically, Department rules required a weekly claim for regular UI benefits to be filed within seven days of the end of the week of unemployment in question. However, beginning in March 2020, due to the Department's high call volume during the COVID-19 pandemic, the Department adopted a temporary policy allowing claimants to file late weekly claims for regular UI benefits back to weeks of unemployment dating from mid-March 2020. The Department rescinded this temporary policy on March 16, 2021.³

days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

² The record shows that On September 21, 2021, the Department issued a PUA determination concluding that claimant was not entitled to receive PUA benefits. Exhibit 4 at 155. On December 1, 2021, the Department issued another PUA determination concluding that claimant *was* entitled to receive PUA benefits. Exhibit 4 at 75. Finally, on March 2, 2022, the Department issued the PUA determination that is the subject of this appeal, concluding that claimant was not eligible to receive PUA benefits.

³ EAB has taken notice of these facts, which are contained in Employer Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(8) On September 1, 2021, claimant filed an initial application for PUA benefits. Thereafter, claimant claimed PUA benefits for the weeks including April 5, 2020, through April 11, 2020 (week 15-20), April 19, 2020 through May 30, 2020 (weeks 17-20 through 22-20), and June 7, 2020 through May 29, 2021 (weeks 24-20 through 21-21). These are the weeks at issue. The Department did not pay claimant PUA benefits for the weeks at issue.

(9) On September 24, 2021, claimant filed weekly claims for benefits under his regular UI claim for week 15-20, and 17-20 through 22-20. On October 1, 2021, claimant filed weekly claims for benefits under his regular UI claim for weeks 24-20 through 53-20. On October 7, 2021, claimant filed weekly claims for benefits under his regular UI claim for weeks 01-21 through 21-21.

(10) The Department did not pay claimant regular UI benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 21-21 because each weekly claim for regular UI benefits was not filed within seven days of the end of the week of unemployment in question.

(11) On October 8, 2021, the Department issued decision # 73358, concluding that claimant failed to make timely weekly claims for benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 53-20, and therefore denying regular UI benefits for those weeks. Also on October 8, 2021, the Department issued decision # 80230, concluding that claimant failed to make timely weekly claims for benefits for weeks 01-21 through 21-21, and therefore denying regular UI benefits for those weeks. On October 28, 2021, decisions # 73358 and 80230 became final without claimant having filed requests for hearing on either administrative decision.

CONCLUSIONS AND REASONS: Claimant was not eligible for PUA benefits for the weeks including April 5, 2020, through April 11, 2020 (week 15-20), April 19, 2020, through May 30, 2020 (weeks 17-20 through 22-20), and June 7, 2020, through May 29, 2021 (weeks 24-20 through 21-21).

Claimant did not receive PUA benefits for the weeks at issue and, therefore, claimant had the burden to prove that he should have been paid benefits for those weeks. *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).

To be entitled to receive PUA benefits under the CARES Act, as amended, an individual must be a “covered individual” as that term is defined by the Act. 15 U.S.C. § 9021(b). In pertinent part, the Act defines a “covered individual” as an individual who (1) “is not eligible for regular compensation . . . under State or Federal law . . . including an individual who has exhausted all rights to regular unemployment . . . under State or Federal law” and (2) self-certifies that they are either “otherwise able to work and available to work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because” of one of eleven reasons related to the COVID-19 pandemic, or “is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment” and is rendered unemployed because of one of the eleven listed reasons. 15 U.S.C. § 9021(a)(3)(A).

Resolution of this case turns on the first element of covered individual status: whether claimant was eligible for regular UI benefits for the weeks at issue. The record shows that claimant filed an initial

claim for regular UI benefits on April 7, 2020, the Department determined that claimant had a monetarily qualified claim for regular UI benefits, and the Department did eventually pay claimant regular UI benefits for the weeks for which he filed timely weekly claims, weeks 14-20 and 16-20. However, the Department denied claimant regular UI benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 21-21 because he failed to file timely weekly claims for regular UI benefits for those weeks. It is therefore necessary to assess whether the denial of regular UI benefits due to claimant's late weekly claims made claimant ineligible for regular UI as to those weeks, such that he would be considered a covered individual for purposes of the PUA program.

Claimant's failure to file timely weekly claims for regular UI benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 21-21 rendered him ineligible to receive regular UI benefits for those weeks. ORS 657.155(1)(b) provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits with respect to such week in accordance with ORS 657.260. ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. OAR 471-030-0045(4) (January 11, 2018) provides, in pertinent part, that a weekly claim for benefits "must be filed no later than seven days following the end of the week for which benefits . . . is claimed[.]"

Claimant filed his weekly claims for regular UI benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 21-21 more than seven days after the end of each respective week, and therefore did not comply with OAR 471-030-0045(4). Failing to comply with OAR 471-030-0045(4), in turn, meant that claimant failed to fulfill ORS 657.260(1) and ORS 657.155(1)(b) as to those weeks and therefore was not eligible to receive regular UI benefits for those weeks. Note that OAR 471-030-0045(5) contains a provision authorizing the Department to permit weekly claims be filed on a different reporting schedule.⁴ This provision appears to have authorized the Department's temporary policy allowing individuals to file late weekly claims for regular UI benefits back to weeks of unemployment dating from mid-March 2020. However, the Department ended this temporary policy on March 16, 2021, and the record shows that claimant did not file his weekly claims for regular UI benefits until several months after March 16, 2021 (specifically, on September 24, 2021, for week 15-20, and weeks 17-20 through 22-20; October 1, 2021 for weeks 24-20 through 53-20; and October 7, 2021 for weeks 01-21 through 21-21).

It is regrettable that claimant's initial inability to reach a Department representative over the phone, delays relating to authorizing release of information to claimant's mother, focus on verifying claimant's identity, and contradictory information regarding whether claimant would be eligible for PUA may have contributed to claimant's failure to file timely weekly claims for regular UI benefits for those weeks. Nevertheless, absent claimant filing late requests for hearing on decisions # 73358 and 80230 and those requests for hearing meeting the criteria to be allowed, decisions # 73358 and 80230 are final and therefore binding as a matter of law. As such, under ORS 657.155(1)(b), claimant was not eligible for regular UI benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 21-21.

Claimant's ineligibility for regular UI due to filing late weekly claims does not constitute being ineligible for regular UI for purposes of PUA. 15 U.S.C. § 9021(h) provides that regulations at 20 C.F.R.

⁴ "The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions." OAR 471-030-0045(5).

part 625 apply to the PUA program, *unless* otherwise provided or contrary to the statute. Applying the regulations is mandatory, except as otherwise provided by the statute or in the event of a conflict between the statute and the regulations, because the plain language of § 9021(h) provides that the regulations “shall apply[.]” 15 U.S.C. § 9021(h) states that 20 C.F.R. part 625 applies to administration of the PUA program as if the term “COVID-19 public health emergency” were substituted for the term “major disaster” and as if the term “pandemic” were substituted for the term “disaster” each place that those terms appear in the regulations.

So modified, 20 C.F.R. Section 625.4 provides, in pertinent part, that an “individual shall be eligible to receive a payment of [PUA benefits] with respect to a week of unemployment . . . if: . . . [t]he individual is not eligible for [regular UI] compensation . . . or for waiting period credit for such week under any other Federal or State law[.]” 20 C.F.R. § 625.4(i). The regulation states further, “An individual ***shall be considered ineligible for compensation*** or waiting period credit (***and thus potentially eligible for [PUA benefits] if the individual is under a disqualification*** for a cause that occurred prior to the individual’s unemployment due to the [pandemic], ***or for any other reason is ineligible for compensation or waiting period credit as a direct result of the [COVID-19 public health emergency]***.” 20 C.F.R. § 625.4(i) (emphasis added).

Thus, under 20 C.F.R. § 625.4(i), a disqualification from receiving benefits that occurred prior to the pandemic, such as a disqualification resulting from a voluntary quit without good cause, would be sufficient to count as being ineligible for regular UI benefits for purposes of PUA eligibility. However, claimant’s ineligibility for regular UI due to filing late weekly claims for the weeks at issue is not a disqualification for a cause that occurred prior to his unemployment due to the pandemic. Under 20 C.F.R. § 625.4(i), if claimant was for any other reason ineligible for regular UI as a direct result of the COVID-19 public health emergency, that too would count as being ineligible for regular UI benefits for purposes of PUA eligibility. However, claimant’s ineligibility for regular UI came as a result of his filing late weekly claims for regular UI and not as a direct result of the COVID-19 public health emergency.

Accordingly, under 20 C.F.R. § 625.4(i), claimant’s ineligibility for regular UI due to filing late weekly claims for the weeks at issue does not amount to being ineligible for regular UI for purposes of the PUA program. *See also Calef v. Employment Department*, 327 Or.App. 82 (2023) (holding that, under 20 C.F.R. § 625.4(i), claimant was not ineligible for regular UI for purposes of PUA eligibility where claimant was ineligible for regular UI benefits because disqualifying income from a part-time job rendered her not “unemployed” under ORS 657.100(1)).

This result is reinforced by PUA guidance documents issued by the United States Department of Labor. In question-and-answer sections of the guidance documents explaining the element of PUA that requires an individual to be ineligible for regular UI, the Department of Labor notes that a prior disqualification for cause can constitute ineligibility for regular UI for purposes of PUA eligibility. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) (UIPL 16-20, Change 2), at I-5 (“[I]f the individual is disqualified from regular UC because of the prior separation issue, but is currently unable or unavailable to work for one of the listed COVID-19 related reasons . . . , then the individual may be eligible for PUA”). The guidance documents also mention that ineligibility for regular UI for purposes of PUA eligibility may be achieved if an individual has earned insufficient subject wages to be monetarily qualified for regular UI benefits, or if they have not earned sufficient

requelifying subject wages after a regular UI claim expires. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) (UIPL 16-20, Change 1), at I-6-8. Nowhere, however, do the guidance documents indicate that being ineligible for regular UI due to filing late weekly claims is sufficient to count as being ineligible for regular UI for purposes of PUA eligibility.

For these reasons, claimant was not ineligible for regular UI benefits for the weeks at issue for purposes of PUA eligibility. Therefore, claimant was not a covered individual under 15 U.S.C. § 9021(b) and was ineligible to receive PUA benefits for the weeks at issue.

Moreover, as to weeks 15-20, 17-20 through 22-20, and 24-20 through 49-20, claimant was also ineligible to receive PUA benefits for an additional reason. Section 201(f) of the Continued Assistance for Unemployed Workers Act of 2020 ("CAA"),⁵ requires that if an individual files their initial PUA claim after December 27, 2020, the initial claim 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-18–19. 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).

Here, claimant filed his initial PUA application on September 1, 2021. Claimant then claimed benefits for the weeks including April 5, 2020, through April 11, 2020 (week 15-20), April 19, 2020 through May 30, 2020 (weeks 17-20 through 22-20), and June 7, 2020 through May 29, 2021 (weeks 24-20 through 21-21). However, per the CAA and U.S. Department of Labor guidance, because weeks 15-20, 17-20 through 22-20, and 24-20 through 49-20 occurred prior to December 6, 2020, PUA benefits were not payable for those weeks, even if claimant had otherwise been considered a covered individual. As a result, claimant was not eligible to receive PUA benefits for weeks 15-20, 17-20 through 22-20, and 24-20 through 49-20 for this additional reason.

For the reasons discussed above, claimant was not eligible for PUA benefits for the weeks at issue.

DECISION: Order No. 23-UI-242906 is affirmed.

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

DATE of Service: February 1, 2024

⁵ 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: 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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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
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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.