

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0699

Reversed & Remanded

PROCEDURAL HISTORY: On April 28, 2025, the Oregon Employment Department (the Department) issued an amended Notice of Determination for Pandemic Unemployment Assistance (PUA), concluding that claimant was ineligible to receive PUA benefits effective the week ending February 8, 2020.¹ On May 19, 2025, the April 28, 2025 PUA determination became final without claimant having filed a request for hearing. On March 9, 2026, claimant filed a late request for hearing.² ALJ Kangas considered the request, and on April 21, 2026 issued Order No. 26-UI-327776, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 5, 2026. On May 2, 2026, claimant filed a timely appellant questionnaire response. On May 5, 2026, the Office of Administrative Hearings (OAH) sent a letter stating that Order No. 26-UI-327776 was vacated and that a hearing would be scheduled to determine whether the late request for hearing should be allowed and, if so, the merits of the PUA determination.

On June 5, 2026, ALJ Enyinnaya conducted a hearing and at its conclusion ruled on the record that claimant's late request for hearing was allowed and that another hearing would be scheduled to address the merits of the April 28, 2025 PUA determination. Later on June 5, 2026, notice was mailed to claimant that the merits hearing was scheduled for June 24, 2026. On June 24, 2026, ALJ Enyinnaya conducted the merits hearing at which claimant failed to appear, and on June 26, 2026 issued Order No. 26-UI-333655, allowing claimant's late request for hearing and affirming the April 28, 2025 PUA determination. On June 29, 2026, claimant filed an application for review of Order No. 26-UI-333655 with the Employment Appeals Board (EAB).³

¹ The April 28, 2025 PUA determination replaced a PUA determination issued August 13, 2021 which concluded that claimant was ineligible to receive PUA benefits effective December 27, 2020. Claimant had not filed a request for hearing on the August 13, 2021 PUA determination.

² The request for hearing was applied to the August 13, 2021 PUA determination despite that determination having been cancelled and replaced by the April 28, 2025 PUA determination. The notices of hearing and Order No. 26-UI-327776 refer to the earlier PUA determination, though the April 28, 2025 PUA determination is the proper subject of claimant's appeal.

³ OAH initially treated the application for review as a request to reopen the June 24, 2026 hearing, but ultimately did not treat it as such or take further action affecting the status of the appeal.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's written explanation for having missed the June 24, 2026 hearing, and claimant's written statement regarding his PUA eligibility. These documents have been marked as EAB Exhibits 1 and 2, respectively, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibits will remain in the record.

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 26-UI-333655 allowing claimant's late request for hearing. That part of Order No. 26-UI-333655 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) On June 24, 2020, claimant filed an initial claim for PUA benefits. Claimant thereafter filed continued claims for the weeks of February 2, 2020 through October 31, 2020. Claimant subsequently filed another initial claim for PUA benefits on January 10, 2021, but did not file continued claims for any other weeks. The Department determined that neither initial claim was valid because claimant was not a "covered individual" eligible for PUA as defined by law. The Department did not pay any benefits on the claim.

(2) On June 5, 2026, notice was mailed to claimant's address on file with OAH that a hearing on the merits of the PUA determination was scheduled for June 24, 2026 at 8:15 a.m. Claimant received the notice prior to the hearing date and made arrangements with his employer to participate in the hearing at a time he would otherwise have been working.

(3) On June 24, 2026, claimant's phone was accidentally destroyed while he was at work, prior to the hearing time, and he did not have access to another phone. Claimant was therefore unable to participate in the hearing or request a postponement.

CONCLUSIONS AND REASONS: Order No. 26-UI-333655 is set aside, and this matter remanded for further development of the record regarding claimant's PUA eligibility.

To be eligible for 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(b). In pertinent part, a "covered individual" is an individual who (1) "is not eligible for regular compensation or extended benefits . . . or pandemic emergency unemployment compensation" 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.⁴ 15 U.S.C. § 9021(a)(3)(A)(i)-(ii).

⁴ There is a third element of "covered individual" status, added to the Act via the Continued Assistance for Unemployed Workers Act of 2020, enacted on December 27, 2020. The third element requires certain claimants to provide documentation substantiating their employment or self-employment within a required timeframe. 15 U.S.C. § 9021(a)(3)(A)(iii). Claimant did not claim benefits for any weeks after the effective date that would subject his claim to the additional requirement of that

Where the Department has paid benefits it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). 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.

OAR 471-041-0090(1) provides, in relevant part:

* * *

(b) Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that:

(A) The additional evidence is relevant and material to EAB's determination, and

(B) Factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record.

* * *

The Department's representative at hearing asserted that claimant was not a "covered individual" primarily due to not having an attachment to the Oregon labor market at or shortly before the start of the COVID-19 pandemic. In support of that assertion the representative cited substantial discrepancies between the work histories claimant provided on the June 24, 2020 and January 10, 2021 initial claims, and that the Department's wage records and other investigatory sources revealed no evidence to substantiate either version of claimant's work history, or that any of the employment or self-employment listed on the claims had actually occurred. As claimant had the burden of proving that he was a "covered individual" but did not participate in the merits hearing, the conclusions of the order under review echoed the findings of the Department that claimant did not show a connection to the labor market at the start of the pandemic. Order No. 26-UI-333655 at 4.

However, claimant provided a statement to EAB asserting that he had "provided numerous receipts of service [in self-employment] for computer repair and programming" to the Department in the adjudication process, as well as tax returns for 2019 and 2020. EAB Exhibit 2 at 1. Additionally, claimant provided a statement with his application for review explaining that he was unable to attend the June 24, 2026 merits hearing because his phone was accidentally destroyed at his workplace shortly before the hearing time and he did not otherwise have access to a phone. EAB Exhibit 1 at 1. EAB allowed claimant's request to consider the evidence regarding his PUA eligibility because a factor beyond his reasonable control prevented him from offering it at the hearing. Based on that evidence, further development of the record is warranted to determine whether claimant was a "covered individual."

On remand, inquiry should include whether claimant was employed or self-employed in 2019 and 2020 and, if so, the details of that employment or self-employment; whether documentary evidence to

amendment. However, states have an independent authority to request supporting documentation for fraud prevention, which is separate from the substantiation requirement. 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-9.

substantiate the employment or self-employment has been provided by claimant or otherwise exists; if claimant was employed or self-employed, whether he became unemployed as a direct result of one of the enumerated COVID-19 related reasons set forth in 15 U.S.C. § 9021(a)(3)(A)(ii); and why claimant submitted inconsistent work history information in the two initial claims for PUA benefits. The parties may offer new information, such as documentary evidence relevant to whether claimant was a “covered individual,” into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was eligible to receive PUA benefits, Order No. 26-UI-333655 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-333655 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 13, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-333655 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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