



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

CHARLES D. BAKER  
GOVERNOR

KARYN E. POLITO  
LIEUTENANT GOVERNOR

ROSALIN ACOSTA  
SECRETARY

PAUL T. FITZGERALD, ESQ.  
CHAIRMAN

CHARLENE A. STAWICKI, ESQ.  
MEMBER

MICHAEL J. ALBANO  
MEMBER

**ORDER TO RESCIND AND RE-ISSUE FINAL DECISION**

**CLAIMANT APPELLANT:**

[Redacted]

[Redacted]

**EMPLOYER:**

Issue ID: 0046 9872 87

On September 29, 2020, the Board of Review issued a final decision to affirm a decision by a review examiner in the Department of Unemployment Assistance (DUA), which denied benefits to the claimant. Benefits were denied pursuant to G.L. c. 151A, §§ 29(a) and 1(r), beginning with the effective date of her claim, June 21, 2020, and while the claimant was on an unpaid leave of absence from her employer.

Shortly after the Board issued its decision in this case, the DUA announced new retroactive policies pertaining to individuals who were unable to work for their employer due to having been impacted by the COVID-19 pandemic. *See* Unemployment Insurance Policy and Performance Memorandum (UIPP) 2020.12 (Oct. 8, 2020) and UIPP 2020.13 (Nov. 2, 2020). These policies apply to the claimant's circumstances and the period of time covered in this case. In more recent appeals, the Board of Review has given deference to these DUA policy statements in eligibility determinations under G.L. c. 151A, §§ 29(a) and 1(r).

In light of retroactive policy changes implemented shortly after its final decision, the compelling factual circumstances in this case, and because the interests of justice would be served, the Board hereby RESCINDS its Final Decision, dated September 29, 2020.<sup>1</sup>

Furthermore, because the claimant was on standby status and unable to work as a consequence of a combination of family medical concerns and the lack of child-care due to COVID-19, the Board concludes as a matter of law that the claimant is eligible for benefits under G.L. c. 151A, §§ 29(a) and 1(r), while she was on her unpaid leave of absence from the employer.

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning June 21, 2020, if otherwise eligible.

---

<sup>1</sup> We also note that the employer will not be prejudiced by this Order, because, under the CARES Act, the federal government is paying 100% of benefits for this claim.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 10, 2020**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AB/rh

cc: [A], DUA Assistant Chief Counsel  
[B], Esq.

