

To be available for work under G.L. 151A, § 24(b), the claimant, a non-citizen, must show USCIS employment authorization during his benefit year. The claimant demonstrated that he had USCIS employment authorization during his base period, but only during a portion of his benefit year. Therefore, he is eligible for PUA benefits only beginning the date that his USCIS employment authorization was re-instated.

**Board of Review
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Issue ID: N6-F84F-3KDN

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny Pandemic Unemployment Assistance (PUA) benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued on August 5, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination and denied PUA benefits in a decision rendered on December 23, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that he was authorized to work, and, thus, the claimant was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional information pertaining to the claimant's work authorization status. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not meet the eligibility requirements for PUA benefits because he was not authorized to work in the United States during the benefit year of his claim, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) effective March 14, 2020.
2. The claimant is not a citizen of the United States.

3. On May 4, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a fact-finding notice, requesting documentation regarding whether he was authorized to work in the United States.
4. The claimant's employment authorization expired on December 27, 2019.
5. The claimant submitted his application to renew his employment authorization on May 14, 2020, after his employment authorization had already expired.
6. The application was not delayed by the federal government due to the COVID-19 pandemic. The delay was due to the wrong fee amount being submitted with the application.
7. The federal government did not grant the claimant an extension of his employment authorization that expired on December 27, 2019.
8. The claimant was granted new employment authorization from the United States government for the period October 28, 2020 to October 27, 2022.
9. The claimant has a driver's license. It was issued on February 6, 2018 and expires May 5, 2022.
10. The claimant has a social security card. The social security card states on it: "VALID FOR WORK ONLY WITH DHS AUTHORIZATION."
11. On June 11, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he did not meet the eligibility requirements to receive PUA benefits.
12. On August 5, 2020, the DUA sent the claimant a second Notice of Non-Monetary Issue Determination, again informing him that he did not meet the eligibility requirements to receive PUA benefits.
13. The claimant appealed the DUA's determination.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. There appears to be a typographical error in Consolidated Finding # 1, which lists the effective date of the claim as March 14, 2020. As the claimant's PUA benefits records show the effective date of his claim to be March 8, 2020, we accept that as the correct effective date. In adopting the remaining findings, we deem them to be supported by substantial and credible

evidence. However, as discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant is not eligible for PUA benefits during the entire period on appeal.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and administered by the U.S. Secretary of Labor.¹ In order to qualify for PUA benefits, the claimant must show that he is available for work within the meaning of state law.²

The review examiner initially denied benefits after concluding the claimant had not established that he was legally available for work in the United States. In reaching this conclusion, the review examiner applied the state law provision under G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any
other occupation for which he is reasonably fitted

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered “available for work.” Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

(f) Alien status. To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien’s status.

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that during his benefit year, he was legally authorized to work by the appropriate U.S. agency, currently the USCIS.

In this case, the claimant’s PUA benefit year is March 8, 2020 through April 10, 2021. He has presented evidence showing that he had USCIS employment authorization prior to filing his PUA claim, which expired on December 27, 2019. *See Consolidated Finding # 4.* However, during his benefit year, he has only presented evidence showing USCIS employment authorization starting on October 28, 2020. *See Consolidated Finding # 8.* Therefore, he has shown that he was available for work during his benefit year beginning October 28, 2020.

Although the claimant applied for an extension of his previously expired employment authorization, he did not receive a retroactive extension. *See Consolidated Findings ## 5 and 7.* Without evidence showing the claimant received such an extension, we do not have the authority

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

² CARES Act, § 2102(a)(3)(A)(ii)(I).

to deem the claimant to have been legally authorized to work in the United States prior to October 28, 2020. *See Consolidated Findings ## 7 and 8.*

We, therefore, conclude as a matter of law that the claimant was authorized to work within the meaning of G.L. c. 151A, § 24(b), only for the period during his benefit year beginning October 28, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied PUA benefits from the week beginning March 8, 2020, through October 31, 2020. He is entitled to receive PUA benefits starting with the week beginning November 1, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 5, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**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

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.

LSW/rh