

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-F8DP-L8PK

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 15, 2020, which was denied in a determination issued on July 10, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 22, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had not been granted authorization to work in the United States by the U.S. Government during his benefit year and, thus, he was ineligible for benefits 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 afford the claimant an opportunity to provide new evidence showing that the U.S. Citizenship and Immigration Services (USCIS) had authorized him to work during his benefit year. The claimant participated in 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 original decision, which disqualified the claimant from receiving any PUA benefits due to lack of employment authorization in his benefit year, is supported by substantial and credible evidence and is free from error of law, where the claimant has presented a new Employment Authorization Card showing work authorization beginning December 14, 2020.

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) with an effective date of March 15, 2020.
2. The claimant is not a citizen of the United States.
3. The claimant was issued a letter from the Department of Unemployment Assistance (DUA) on May 11, 2020. The letter asked him to provide documents to establish valid work authorization.
4. The claimant received a Notice of Non-Monetary Issue Determination-Work Authorization issued July 10, 2020, informing him that the DUA could not determine whether he had valid work authorization. Consequently, he was not eligible to receive PUA benefits.
5. The claimant received a Notice of Non-Monetary Issue Redetermination-Work Authorization issued August 7, 2020, informing him that the DUA could not determine whether he had valid work authorization. Consequently, he was not eligible to receive PUA benefits.
6. The claimant has a United States Employment Authorization card issued by the United States Citizenship and Immigration Services which was valid from 10/19/2018 to 10/18/2019.
7. The claimant has a United States Employment Authorization card issued by the United States Citizenship and Immigration Services which is valid from 12/14/2020 to 12/13/2021.
8. The claimant has several Form I-979C Notice of Action for a Petition letters from the USCIS. Each letter states at the top: "THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT."
9. From the October 19, 2019 to December 13, 2020, the claimant did not receive an extension from the U.S. government to be authorized to work in the U.S.
10. The claimant applied to be authorized to work in the U.S. between January and February of 2020. Due to the COVID-19 pandemic, the claimant's application was delayed.

Ruling of the Board

In accordance with our statutory obligation, we review 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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, with the additional evidence presented after remand, we conclude that the claimant may not be disqualified from receiving PUA benefits during his entire benefit year, as discussed more fully below.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the 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 15, 2020, through April 10, 2021. He has presented evidence showing that he had USCIS employment authorization prior to filing his PUA claim, from October 19, 2018, through October 18, 2019. *See Consolidated Finding # 6.* However, during his benefit year, he has only presented evidence showing USCIS employment authorization starting on December 14, 2020. *See Consolidated Finding # 7.* Therefore, he has shown that he was available for work during his benefit year beginning December 14, 2020.

Although the claimant demonstrated that he had applied for renewal of his prior work authorization in early 2020, and credibly testified that the USCIS was delayed in processing that application due to the COVID-19 pandemic, he did not show that his prior employment authorization had been automatically extended. *See Consolidated Findings ## 8 and 10.* During the hearing, he admitted that he did not receive any extension of his employment authorization from the U.S. government

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

² CARES Act, § 2102(a)(3)(A)(ii)(I).

between October 18, 2019, and December 14, 2020. *See* Consolidated Finding # 9. Without evidence demonstrating such an extension, we do not have authority to deem the claimant to have been legally authorized to work in the United States during that period of time.

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 December 14, 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 15 through December 12, 2020. He is entitled to receive PUA benefits starting with the week beginning December 13, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 2, 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.

AB/rh