

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 until his work authorization expired.

**Board of Review
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Issue ID: N6-F8K7-3VM3

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.

The claimant filed a claim for PUA benefits with the DUA, effective March 1, 2020, which was denied in a determination issued on August 13, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination, finding the claimant eligible for PUA benefits from March 1, 2020, through March 21, 2020, and ineligible thereafter, in a decision rendered on December 23, 2020. We accepted the claimant's application for review.

Benefits were awarded through March 21, 2020, after the review examiner determined that the claimant failed to show that he was authorized to work in the United States beyond March 25, 2020, and, thus, he was disqualified from receiving benefits under G.L. c. 151A, § 24(b), subsequent to that date. 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 after March 25, 2020, because he was no longer authorized to work in the United States, 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 and credibility assessment are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) effective March 1, 2020.
2. The claimant was issued a Notice of Non-Monetary Determination Work Authorization dated June 15, 2020.
3. The claimant is not a Permanent Resident or a citizen of the United States.
4. The claimant has a Social Security Card issued by the Social Security Administration that states "Valid for Work Only with DHS Authorization."
5. The claimant has an Employment Authorization card from the United States Customs and Immigration Services (USCIS) that expired on March 25, 2020.
6. The claimant applied to renew his Employment Authorization card in 2020.
7. The claimant has a "Return Notice" from USCIS, dated December 9, 2020, that states that the claimant's Application for Employment Authorization was being returned due to an incorrect payment amount. The notice shows that the claimant's application was received on October 8, 2020.
8. The claimant has a "Receipt" from USCIS, dated March 3, 2021, that states that the claimant's application was received and is being processed. The receipt shows that the claimant's application was received on December 31, 2020.
9. The claimant has not yet received a renewed Employment Authorization card.

Credibility Assessment:

The claimant testified that he initially replied to renew his Employment Authorization card on February 10, 2020 but, due to COVID-19, he did not receive any notice from USCIS regarding the status of his application for renewal until he received the "Return Notice" dated December 9, 2020. The claimant testified that he enclosed a payment of \$410 for his application, which was the fee as of the date he mailed the application. The claimant testified further that the fee was increased to \$495 on October 1, 2020. The "Return Notice" shows that USCIS received the application on October 8, 2020, far after the expiration date of the claimant's prior EAD on March 25, 2020. The claimant testified further that he immediately returned the application with the correct payment, and received a receipt for his application, dated March 3, 2021. The claimant has yet to receive the Employment Authorization card, or any other documentation from USCIS besides the receipt dated March 3, 2021.

The claimant was unable to offer any specific documentary evidence that COVID-19 was responsible for the delay in the receipt of his application. He also did not have credible evidence to show that he had originally applied for a renewal of his Employment Authorization card on February 10, 2020, or some other date prior to

the expiration of his EAD. As such, there is no substantial and credible evidence in the record from which a finding could be made as to the exact date that the claimant applied for the renewal, and a finding of fact as it relates to the specific date in 2020 that the claimant applied for renewal was not made.

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. 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. We further believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner’s legal conclusion that the claimant is eligible for PUA benefits from the effective date of his claim through March 21, 2020, and ineligible for benefits thereafter.

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 found the claimant eligible for benefits from the effective date of his claim through March 21, 2020, and ineligible thereafter after concluding the claimant’s work authorization had expired on March 25, 2020. 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.

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

² See CARES Act, § 2102(a)(3)(A)(ii)(I).

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 1, 2020, through September 4, 2021. His employment authorization expired March 25, 2020, and has not yet been renewed by USCIS. *See Consolidated Findings ## 5 and 9.* As there is no evidence indicating that the claimant received an extension for his now-expired work authorization, we do not have the authority to deem the claimant to have been legally authorized to work in the United States after March 25, 2020. *See Consolidated Findings ## 7-9.*

We, therefore, conclude as a matter of law that the claimant was only available for work within the meaning of G.L. c. 151A, § 24(b), from the week beginning March 1, 2020, the effective date of his claim, through March 21, 2020, and was not available for work thereafter.

The review examiner's decision is affirmed. The claimant is entitled to receive PUA benefits from the week beginning March 1, 2020, through March 21, 2020. He is denied PUA benefits as of the week beginning March 22, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 9, 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