

Claimant was not eligible for PUA benefits because he remained eligible for extended benefits through the PEUC program on his 2019-01 regular unemployment claim.

**Board of Review
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Issue ID: N6-F9JD-N99T

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued on May 26, 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 June 9, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was ineligible for benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 because he was receiving benefits through a valid claim in the Massachusetts regular unemployment insurance program. 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 evidence about the reasons why the claimant was no longer working and was certifying for PUA benefits. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 was not eligible for PUA benefits because he had an open claim for regular unemployment benefits and had not shown he was determined to be ineligible for said benefits, 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 regular unemployment benefits (UI) on August 14, 2019, with an effective date of August 11, 2019, and a weekly benefit amount (WBA) of \$369.00.

2. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) on May 10, 2020, with an effective date of March 8, 2020, and a weekly benefit amount of \$267.00.
3. The claimant certified for PUA benefits from week ending March 14, 2020, through week ending April 25, 2020, then week ending February 6, 2021, then weeks ending May 29, 2021, through September 4, 2021.
4. The regular UI claim was eligible for extended benefits during the pandemic from March 29, 2020, and PEUC 1.0 and PEUC 1.1 after that.
5. There were no separation issues affecting payment of the claim.
6. The claimant received a Notice of Eligibility Issue Determination dated May 26, 2020 which states, in pertinent part, "Our records indicate that you are not eligible for Pandemic Unemployment Assistance (PUA) as of March 8, 2020 because you either currently have an active claim for regular unemployment insurance benefits, have wages or credits that potentially qualify you for a regular Unemployment Insurance claim, or you are potentially eligible for extended Pandemic Emergency Unemployment Compensation (PEUC 1.1). PUA benefits are not payable to individuals who qualify for regular unemployment benefits."
7. The claimant received a Notice of Eligibility Issue Redetermination dated February 28, 2022, which reiterated that the claimant was not eligible for PUA benefits beginning March 8, 2020, and indefinitely thereafter.
8. The claimant was consistently working full time through May 22, 2021, which was his last day of work. The claimant usually worked 40 hours, Monday through Friday, 8 hours each day at the pay rate of \$14.00 per hour.
9. The employer's pay week runs from Saturday to Friday and the claimant is paid bi-weekly.
10. During the week of May 16, 2021, through May 22, 2021, the claimant worked a total of 50.25 hours and had gross earnings of \$719.25.
11. The claimant performed no hours of work for the employer even on a relief or per diem basis between the week beginning May 23, 2021, and the week ending September 4, 2021. The claimant returned to work on September 6, 2021.
12. The claimant's gross wages were \$0 between the week beginning May 23, 2021, and the week ending September 4, 2021.
13. During the week of September 5, 2021, through September 11, 2021, the claimant worked a total of 36.5 hours and had gross earnings of \$511.00.

14. The claimant stopped working on May 22, 2021, due to the employer not having any COVID-19 preventative procedures in place, such as mandatory mask wearing, COVID-19 testing of employees, or a vaccine requirement.
15. The claimant believed the employer's lack of COVID-19 preventative procedures was insufficient because of the exposure his co-workers were incurring from the general community outside of work, which they were exposing the claimant to once they returned to the workplace.
16. The claimant's belief that his workplace was unsafe for his family in May of 2021 was due to his parents being elderly and his mother requiring an operation which put them at a higher risk were they to contract COVID-19. The claimant is in daily contact with his parents and the parents rely on the claimant for transportation to appointments and to run errands. The claimant did not have any medical conditions himself which would increase his risk from exposure to COVID-19.
17. The claimant and other employees raised concerns about the lack of COVID-19 preventative procedures at staff meetings attended by the supervisor and site manager but were told that a decision to implement any COVID-19 preventative procedures would have to be issued from higher up in the company.
18. On May 13, 2021, the claimant told the employer he was concerned that there was not sufficient protection from COVID-19 in the workplace and he would have to stop working. The claimant stated he would work until May 22, 2021. The claimant did not tell the employer that he resigned his position. The claimant did not request a leave of absence.
19. The employer suggested the claimant drop down to a relief (on-call) position until workplace conditions improve rather than resign.
20. The claimant dropped down to the relief position beginning on May 23, 2021. The claimant did not refuse work while in the relief position because he was not called to work while in the relief position from May 23, 2021, through the week ending September 4, 2021.
21. The claimant was searching for full time work after he decided to leave his employment in May 2021. The claimant searched a few times per week using websites and online recruiters, searching local businesses, and sending out his resume to companies that were hiring.
22. The claimant was looking for full-time work. The claimant did not limit his search to part time or per diem work.
23. The claimant did not find alternative employment.

24. The claimant twice contacted the employer to return to full time work in August of 2021, but the employer did not have any work available at that time.
25. The claimant contacted the employer a third time on September 4, 2021, and was told by the employer that there was work and he could return on September 6, 2021.
26. The claimant returned to work on September 6, 2021, because he learned that more employees and the public at large were vaccinated. He learned this information through the news indicating governments were lifting mask mandates and reporting that COVID-19 numbers were down. The employer had not made any changes in their COVID-19 policies or practices.
27. The claimant was capable of and available for full time work during the period between the week beginning May 23, 2021, and the week ending September 4, 2021.

Credibility Assessment:

The claimant's testimony that his last day worked was May 22, 2021, and that he returned to work on September 6, 2021, is determined to be credible. During the first hearing, the claimant was vague as to dates only, providing an estimated month and year initially estimating he returned to work in December 2021. However, in the remand hearing the claimant was prepared to provide the specific dates in each month when he stopped working and when he returned to work. During the reconvened remand session, the claimant further clarified employment dates which was corroborated by specifics as to his hours worked and earnings.

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 decision to deny the claimant PUA benefits.

The claimant in this case seeks PUA benefits, an 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 a covered individual within the meaning of the CARES Act. To receive benefits under the PUA program, claimants must first show that they do not qualify for regular unemployment benefits or have exhausted all rights to

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

regular or extended benefits, including Pandemic Emergency Unemployment Compensation (PEUC).²

In her decision, the review examiner explained that the claimant was not eligible for PUA benefits because he remained eligible for extended benefits under PEUC 1.0 and PEUC 1.1. Consolidated Findings ## 1, 4, and 6. A review of UI Online, the DUA's electronic record-keeping system, confirms that the claimant was receiving regular unemployment benefits under his 2019-01 claim and remained eligible to receive extended benefits under the PEUC program through September 4, 2021. As the claimant had not exhausted his benefits under the PEUC program at the time he was certifying for PUA benefits, he has not shown that he met the first eligibility criterion for PUA benefits.

We, therefore, conclude as a matter of law that pursuant to the CARES Act, § 2102(a)(3)(A)(i), the claimant is not entitled to PUA benefits, because he had not exhausted all rights to regular or extended benefits, including PEUC.

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 8, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

² See CARES Act, § 2102(a)(3)(A)(i).

LSW/rh