

The claimant worked for two Massachusetts-based organizations until February 2020, when she decided to stop working due to her general concerns regarding the COVID-19 pandemic. While these concerns may have been reasonable, they are not among the listed COVID-19 reasons sufficient to establish eligibility for PUA benefits.

**Board of Review
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Issue ID: N6-FJTT-MFJV

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 1, 2020, which was denied in a determination issued on November 19, 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 March 4, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that she was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, the claimant was not eligible for PUA benefits. 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 about the claimant's employment in 2020. 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 was not entitled to PUA benefits because she did not have any documentation showing that her employment was impacted by the COVID-19 pandemic, 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 PUA benefits, with an effective date of March 1, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant filed the PUA claim using a New Hampshire address.
3. The claimant is a piano, music, and dance instructor.
4. The claimant has a 2019 1099-M from a Massachusetts business showing \$2,485 in nonemployee compensation.
5. The claimant has a 2019 1099-M from a Massachusetts business showing \$1,349 in nonemployee compensation.
6. The claimant has a 2019 Schedule C showing \$1,200 in gross sales or receipts and \$0 in net profit. The location of the business is her home address.
7. The claimant has a 2019 Schedule C showing \$3,834 in gross sales or receipts and \$1,262 in net profit. The location of the business is her home address.
8. The claimant and her partner filed a 2020 1040 income tax return showing income and tax payments reflecting Massachusetts employment.
9. The claimant has a check dated February 18, 2020, from the [Employer A] showing payment for services in the amount of \$295.00 for work performed in 2020.
10. The claimant has a check dated February 4, 2020, from [Employer B], located in [Massachusetts], in the amount of \$580.00 for services performed in 2020.
11. The claimant has a 2020 joint tax return filed with her husband.
12. The claimant has a 2020 Schedule C for [Employer C] located at her home address in NH. The principal business is piano instruction. The Schedule C shows no gross receipts or sales and net profit or (loss) of \$-980.
13. The claimant has a 2020 Schedule C for [Employer A] in [Massachusetts]. The Schedule C shows \$875 in gross receipts or sales and a net profit or (loss) of \$-1,421.
14. The claimant has a 2020 Schedule C for [Employer D]. The business address is her home address. The Schedule C shows gross receipts or sales of \$4,7111 [sic] and net profit or (loss) \$-717.
15. The claimant does not have any 2020 1099's.

16. The claimant submitted a handwritten document that shows the dates of her music lessons and payments received for those lessons. They reflect various dates in January (no year indicated) and payments totaling \$580.
17. On November 19, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020.
18. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant's testimony was consistent. The documentary evidence, specifically the checks issued by the Massachusetts employers, substantiate that the claimant conducted services in Massachusetts. She testified that she was employed by two (2) employers as an independent contractor and gave music and language lessons in Massachusetts. Both these businesses are owned by the same individual. The claimant testified that she stopped working in February 2020. She stopped working because of concerns regarding the COVID-19 public health emergency and in-person teaching being stopped due to governmental restrictions.

The claimant's new testimony about work performed in 2020 prior to the COVID-19 public health emergency was credible in light of the supporting checks and 2020 Schedule C's submitted with her BOR appeal. According to her testimony, she began a new business in 2020 which utilizes online teaching for language instruction. This is reflected on the 2020 Schedule C for [Employer D].

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, while we disagree with the review examiner's rationale, we agree with the review examiner's legal conclusion that the claimant was not entitled to PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the CARES Act and administered by the U.S. Secretary of Labor.¹ In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. Among the criteria for eligibility established by the Secretary of Labor, in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual would be eligible for PUA benefits if the individual was "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency ha[d] severely limited his or

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

her ability to continue performing his or her customary work activities, and ha[d] thereby forced the individual to suspend such activities.”² Claimants may also be eligible for PUA benefits under § 2102(a)(3)(A)(ii)(I)(jj), if their “place of employment [was] closed as a direct result of the public health emergency.”

The claimant was a piano, music, and dance instructor who performed some work for two different organizations in Massachusetts. Consolidated Findings ## 3–5. She decided to stop working in February, 2020, because of concerns regarding the COVID-19 public health emergency.³ See Consolidated Findings ## 9 and 10. However, there is no indication from the record that these two organizations ceased their operations in February, 2020. Although not specified in the Consolidated Findings, the Governor of Massachusetts did not order non-essential businesses to cease in-person operations until March 23, 2020.⁴ As such, it is reasonable to infer that organizations for which the claimant worked continued to operate for a period of time after the claimant decided to stop working.

While these two organizations may have ceased operations as a result of the COVID-19 public health emergency, their closure was not the reason the claimant was in unemployment. As the review examiner noted in the credibility assessment, the claimant stopped accepting work from these organizations in February, 2020, due to a generalized fear of exposure to COVID-19. From this we can infer that she would have continued to decline work from these organizations even if her employer had remained open after March 22, 2020. Thus, it was not the COVID-19 public health emergency that severely limited her ability to perform her customary work activities. Instead, the claimant made a volitional choice to remove herself from the workforce based on her generalized concerns surrounding the COVID-19 pandemic.

While the claimant’s generalized concerns regarding the emerging COVID-19 pandemic in February, 2020, may have been reasonable, they are insufficient to show that she was unemployed for a COVID-19 listed reason under the CARES Act. See UIPL 16-20, Change 1, Attachment I, F, question 41, p. I-10 (An individual who declines work due to a general concern about exposure to COVID-19, and who does not meet any of the other applicable criteria, is not eligible for PUA).

We, therefore, conclude as a matter of law that that the claimant has failed to show that she was unable to work in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(jj) or § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

³ The claimant’s testimony in this regard, while not explicitly incorporated into the review examiner’s Consolidated Findings is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

⁴ See COVID-19 Order No. 13 – Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People (Mar. 23, 2020).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 1, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 6, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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