

The claimant is a full-time student at a college in Massachusetts. He worked part-time as a lab monitor until the school's campus shut down due to COVID-19. He continued to be paid through May 22, 2020. The claimant is therefore not eligible for benefits from the week beginning March 15, 2020 (the effective date of his claim) through May 23, 2020, but is eligible for PUA benefits for the week beginning May 24, 2020.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-FJTV-3K66

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 November 10, 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 February 11, 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 he 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 conduct an additional review of the material evidence in the record. 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 failed to show that he was out of work for an approved COVID-19 reason, because his paystubs showed he continued to work for his employer through May 22, 2020, 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) with an effective date of March 15, 2020.

2. The claimant filed the PUA claim using a Florida address.
3. On November 10, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing the claimant that he was not eligible to receive benefits beginning the week ending February 8, 2020. He was informed that he was not eligible to receive benefits, because he failed to respond with the appropriate documentation by the due date.
4. The claimant was enrolled in an undergraduate course of study at a college in Massachusetts. The claimant has an unofficial transcript from his college showing the grades for course offerings from the claimant's college that he was enrolled in during the spring, summer, and fall 2020 semesters, in addition to the spring 2021 courses the claimant's college was offering that claimant is currently enrolled in.
5. The claimant's college was offering classes for the period beginning January 20, 2020 and the claimant was enrolled at his college beginning January 22, 2020 and is still currently enrolled.
6. It is unclear if the claimant's college was offering classes for the period beginning May 18, 2020. The claimant was enrolled in classes at his college during the summer 2020 semester.
7. It is unclear if the claimant's college was offering classes for the period beginning September 7, 2020. The claimant was enrolled in classes at his college during the fall 2020 semester.
8. Prior to filing his PUA claim, the claimant was working part-time at his school monitoring the school's labs.
9. The claimant has paystubs for work performed at his university with a pay period from February 1 through May 22, 2020. The paystubs list the claimant's employee ID, wages, hours worked, year to date earnings, and deductions.
10. The paystubs for March 14, 2020, through May 22, 2020, all show the claimant was paid for 36 hours of work each period. From May 23, 2020 until October 24, 2020 the claimant did not receive any pay from his college job.
11. On May 20, 2020 the claimant received an email from the Lab Operations Manager stating that the labs would be closed over the summer and that as a result much of the lab staff would be furloughed during that time.
12. On July 22, 2020, the claimant received an email from the president of his college regarding COVID-19. The letter states that the Fall 2020 semester would be remote only and that campus will be closed to the college community.

13. The claimant was able to work. No physical ailment prevented him from working.
14. The claimant timely appealed the November 10, 2020 Notice of Non-Monetary Issue 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. 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, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to show he was unemployed for a qualifying COVID-19 reason throughout the entire period on appeal.

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 a covered individual within the meaning of the CARES Act. Pursuant to the provisions of the CARES Act, the U.S. Department of Labor (DOL) has issued guidance pertaining to the qualifications for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020) specifies that full-time students may be eligible for PUA benefits so long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act.² Among the criteria for eligibility established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if they were “unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities.” UIPL 16-20, Attachment I, C(1)(k), p. I-6 (Apr. 5, 2020).

The claimant is a full-time student at a college in Massachusetts who was working part-time as a laboratory monitor for his school. *See Consolidated Findings ## 4–8.* The college furloughed most of its laboratory staff in May, 2020, because the college closed its campus for the summer and fall 2020 semesters due to COVID-19. *See Consolidated Findings ## 11 and 12.* As a result, the claimant did not receive any work from his college after May 22, 2020. *Consolidated Finding # 10.* The claimant was not in unemployment while he continued to be paid through May 22, 2020. *See Consolidated Finding # 10.* However, pursuant to the U.S. Secretary of Labor's guidance, the claimant became unemployed for the qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act as of May 23, 2020.

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

² *See* UIPL 16-20, Change 1, Attachment I, D(28), p. I-7.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was out of work in Massachusetts for a listed COVID-19 reason established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act from the week beginning May 24, 2020.

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits for the week beginning March 15, 2020, through May 23, 2020. The claimant is entitled to receive PUA benefits for the week beginning May 24, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 13, 2021



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.

LSW/rh