

The claimant is a Massachusetts-based lobsterman who was unable to conduct business from the beginning of the fishing season because restaurants were closed and there was no demand for lobsters due to the COVID-19 health emergency. As the impact of the pandemic severely limited his ability to perform work, he is eligible for PUA benefits.

**Board of Review
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Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-FJTV-3L6K

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 22, 2020, which was denied in a determination issued on November 12, 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 5, 2020. 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 obtain additional information about the claimant's work activities in 2020. 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 did not present sufficient evidence to show that he was out of work due to an approved COVID-19 related reason, 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 with an effective date of March 22, 2020.

2. The claimant filed the PUA claim using a New Hampshire address.
3. The claimant previously lived in Massachusetts and moved to New Hampshire in November 2019.
4. On November 13, 2020, the Department of Unemployment Assistance issued the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive PUA benefits beginning the week ending February 8, 2020.
5. The claimant has a Schedule C from his 2019 Federal Tax Return, which includes his name and former Massachusetts address as his business address. The gross amount of self-employment earnings was \$98,318.
6. The claimant is a fisherman who has worked out of Massachusetts for many years.
7. The claimant renewed his fishing permit through December 31, 2020. The claimant's fishing permit is an endorsement notice for commercial lobstering, which is automatically renewed if the claimant meets his annual qualifications, such as paying all necessary fees and keeping a log of all his commercial lobstering trips.
8. The claimant is legally authorized to sell fish in Massachusetts. The claimant has a Shellfish ID Card, issued by the Massachusetts Division of Marine Fisheries, which includes his name. The claimant is also legally authorized to operate a commercial fishing boat. The claimant has a NMFS Operator Card, issued by the National Marine Fisheries Services, which includes his name and picture.
9. The claimant has a handwritten 2020 Form 1099, which shows a total gross income of \$18,929.00. The claimant's 1099 was issued by his son, [Son's Name], who has since taken over the family business.
10. The claimant has been a member of the Massachusetts Lobsterman's Association since 1985. The claimant receives his boat insurance through the Massachusetts Lobsterman's Association.
11. The lobster season normally begins in mid-March. In 2020, the claimant planned to start working in mid-March and sell his catches to his distributor.
12. In March 2020, the claimant's distributor, who purchased the claimant's lobster, was unable to purchase lobster due to the COVID-19 emergency. The distributor, [Business A], was unable to purchase the claimant's lobster because the restaurants with whom the distributor contracted could not operate due to

COVID-19. [Business A] is the only distributor the claimant currently sells to and has been working with the same distributor for the past 20 years.

13. The claimant resumed working in July 2020, at a reduced level, due to the COVID-19 pandemic. The claimant has four catch slips, issued by [Business A], dated July 23 and 28, 2020 and August 13 and 20, 2020. The catch slips highlight only a fraction of the work the claimant conducted since starting work in July 2020 and show how much the claimant sold on those particular days only.
14. The claimant worked until March 5, 2021, using {Business A} as his distributor.
15. The claimant works during the winter months, but business is slow starting in December.

Credibility Assessment:

The claimant's testimony regarding his 2020 work is deemed credible. The claimant provided credible documentation showing that he is authorized to fish in Massachusetts. He also offered credible evidence showing that he was unable to sell fish in March of 2020, due to the COVID-19 public health emergency.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not show he was unemployed as a result of the COVID-19 pandemic.


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

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

The claimant is a lobsterman who works on a boat operating out of a port in Massachusetts. Consolidated Findings ## 5–8. Generally, the claimant would begin working in mid-March, however, in 2020, he was unable to start fishing until sometime in July because restaurants were shut down due to the COVID-19 pandemic and there was no demand for lobsters. Consolidated Findings ## 11–13. Even after the claimant was able to resume fishing in July, he was only able to work at a substantially reduced level because the COVID-19 pandemic continued to impact the restaurant industry. Consolidated Finding # 13. As such, we believe the claimant has shown that the impact of the COVID-19 pandemic severely limited the claimant’s ability to perform his customary work activities.

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 one of the eligibility reasons established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 22, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 9, 2021



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