

The claimant separated from her job in Massachusetts in 2020, because her advancing pregnancy made it too difficult for her to perform her job duties. Because the claimant was not unemployed as a direct result of the COVID-19 emergency, she is not eligible for PUA. The claimant's subsequent COVID-related child-care issues did not make her eligible for benefits, as she was already unemployed for reasons unrelated to COVID.

**Board of Review
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Issue ID: N6-FJTV-9PN7

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. Benefits were denied on the ground 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.

The claimant had filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued by the agency on November 23, 2020. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on February 9, 2021. The claimant sought review by the Board, which remanded the case for additional evidence and subsequently affirmed the review examiner's original decision. The claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On October 6, 2021, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's employment and child-care status in 2020. The claimant participated in the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

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 she 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.

After reviewing the entire record, including the recorded testimony and evidence from the hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant, a resident of Rhode Island, filed a claim for Pandemic Unemployment Assistance (PUA), which was determined to be effective March 8, 2020.
2. The claimant was employed as a delivery driver for a Massachusetts restaurant from December, 2019 to mid-February, 2020.
3. The claimant worked approximately 15 hours per week and earned \$8.50 per hour.
4. The claimant has two pay statements from her Massachusetts employment. The first is dated January 3, 2020, for the pay period of December 23 to December 29, 2019, and the second is dated January 24, 2020, for the pay period of January 3 to January 19, 2020.
5. The claimant's job duties involved physical labor and included the delivery of food and drink orders, stocking the restaurant's refrigerator with drinks, and assembling pizza boxes.
6. The claimant left her job as a delivery driver for the Massachusetts restaurant in mid-February, 2020. The claimant does not know the exact date her employment ended and does not have any pay statements from February, 2020.
7. The claimant separated from her employment because she and her supervisor agreed that her job duties were becoming too difficult for her to perform as her pregnancy entered the third trimester.
8. The claimant did not go on a leave of absence and did not have an agreement with her employer to return to work after she gave birth.
9. After leaving the delivery job in February, 2020, the claimant sought employment that could be performed while pregnant, but she was unable to find a job.
10. The claimant filed her claim for PUA benefits on May 23, 2020, because she had only worked for three months and did not qualify for unemployment, and because her 8-year-old daughter was home remote learning because of the COVID-19 public health emergency.
11. The claimant's 8-year-old daughter was not remote learning at the time the claimant separated from employment in February, 2020.

12. The claimant's 8-year-old daughter began remote learning due to the COVID-19 pandemic on March 13, 2020.
13. The claimant did not have any employment or self-employment on March 13, 2020.
14. The claimant did not have an offer of employment with a start date and salary on March 13, 2020.
15. The claimant gave birth to a son on June 10, 2020.
16. The claimant did not have any employment or self-employment on June 10, 2020.
17. The claimant did not have an offer of employment with a start date and salary on June 10, 2020.
18. On November 23, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Non-Monetary Issue Determination informing her she was not eligible for PUA benefits beginning the week of February 8, 2020, because she did not meet the eligibility requirements under Section 2102 of the CARES Act of 2020, Public Law 116-136.
19. The claimant timely appealed the DUA's November 23, 2020, determination.

Credibility Assessment:

The claimant submitted a letter dated February 25, 2021, from the Superintendent of [City A] Public Schools, which stated that the claimant's daughter began remote learning on March 13, 2020. Although the letter was created for the purposes of the claimant's appeal, the review examiner finds the letter credible in that it is on the school letterhead, contains specific contact information for the school, and it confirms the claimant's testimony during the original and remand hearings that her daughter began remote learning on March 13, 2020, because of the COVID-19 pandemic.

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 believe that the review examiner's consolidated findings of fact support the original conclusion that the claimant is not entitled to PUA benefits.

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 she is a covered individual within the meaning of the CARES Act. After the Board affirmed the review examiner's decision to deny benefits, the claimant appealed to the District Court, which remanded the case to the DUA for an additional hearing to address whether the claimant is eligible for benefits because she was unable to work when her daughter's school was closed for in-person learning due to the COVID-19 public health emergency. After the court-ordered remand hearing, the review examiner found that the claimant was working in Massachusetts in 2020, and she permanently separated from her employer in mid-February because her job duties were becoming too difficult to perform as her pregnancy advanced. *See Consolidated Findings ## 2, 6, 7 and 8.* The review examiner further found that, as a result of the COVID-19 emergency, the claimant's 8-year-old daughter began remote learning on March 13, 2020. *See Consolidated Finding # 12.* Additionally, the claimant was neither working, nor in receipt of a job offer on March 13, 2020, or months later in June, 2020, when she gave birth to her son. *See Consolidated Findings ## 13–17.*

Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act is that an individual will be eligible for PUA benefits if, "A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work." U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(d), p. I-4. Accordingly, had the claimant separated from her Massachusetts employer in March, 2020, in order to care for her daughter while she was learning remotely due to the pandemic, she would have been entitled to PUA benefits, pursuant to § 2102(a)(3)(A)(ii)(I)(dd) of the CARES Act, as this separation would have been a direct result of the COVID-19 emergency.

However, the consolidated findings, which we believe are supported by substantial and credible evidence, show that the claimant did not lose any work in Massachusetts as a direct result of the COVID-19 emergency. Rather, the claimant lost her employment earlier in February, 2020, because her advancing pregnancy prevented her from performing her job duties. Additionally, the claimant did not establish that she had obtained subsequent Massachusetts employment in 2020 that was lost as a direct result of the COVID-19 emergency. Thus, the claimant has not met the criteria for PUA eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I) of the CARES Act. U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(a)–(k), p. I-4 – I-6.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she 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) of the CARES Act.

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

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 14, 2022



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.

SVL/rh