

**The claimant separated from her job in MA 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.**

**Board of Review  
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Member  
Michael J. Albano  
Member**

**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. 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 November 23, 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 9, 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 evidence pertaining to the claimant's employment status in 2020. The claimant participated in 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 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.

### Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment 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. The claimant did not stop working at the restaurant due to the effects of the COVID-19 public health emergency. She stopped working there due to her pregnancy only. She did not return to the job, not due to COVID-19, but because there were no plans for her to do so after she stopped working in mid-February of 2020.
10. 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.
11. 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.
12. After she filed her PUA claim, the claimant has no other employment, whether in Massachusetts or any other state.
13. 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.

14. The claimant timely appealed the DUA's November 23, 2020 determination.

Credibility Assessment:

The claimant's testimony during the Remand hearing confirmed her original testimony of January 13, 2021, that she did not have an agreement with her supervisor to return to her job after she gave birth, and that she was not on a leave of absence. The claimant offered testimony during the Remand Hearing that conflicted with her testimony from the original hearing on January 13, 2021. During the Remand hearing, the claimant stated that she left her job not only because of her pregnancy, but because it was not safe for her to work because of the pandemic, and that she did not realize at the original hearing that she had to keep stating that. The claimant's assertion at the Remand hearing is not considered to be credible. During the original hearing, she was questioned why she filed her PUA claim and how she was affected by COVID-19. The claimant responded that she filed her claim because she could not find a job because of the pandemic, and that even if she found a job, her daughter was home from school. During the January 13, 2021, hearing, the claimant did not testify that she left her job for COVID-19 related reasons, only that due to her pregnancy, she could no longer perform the physical labor required of her job. Furthermore, the claimant's inability to state with certainty when she stopped working, and the lack of documentation showing that she worked until mid-February 2020, supports her original testimony that her pregnancy, not the pandemic, caused her separation.

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.

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.<sup>1</sup> 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 remand, the review examiner found that the claimant was working in Massachusetts in 2020, and she separated from her employer in mid-February because her job duties were becoming too difficult to perform as her pregnancy advanced. These findings establish that the claimant did not lose employment in 2020 as a direct result of the COVID-19 emergency. Thus, the claimant has not met the criteria for PUA eligibility established by the

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I) of the CARES Act. *See* 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.

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



Charlene A. Stawicki, Esq.  
Chairman



Michael J. Albano  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 9, 2021**

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](http://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