

The claimant separated from his job in January of 2020 because he planned to relocate to New York to reside with his spouse. Because the claimant was not unemployed as a direct result of the COVID-19 emergency, he is not eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJTV-FPRH

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 he 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 15, 2020, which was denied in a determination issued by the agency on November 13, 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 23, 2021. The claimant sought review by the Board, which denied the appeal, affirming the review examiner's original decision. The claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On October 1, 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 performed in 2019 and 2020, as well as the timing of and his reason(s) for leaving employment and relocating to New York in early 2020. The claimant participated in the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment.

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.

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 are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) benefits on May 15, 2020, with an effective date of March 15, 2020.
2. The claimant indicated on his PUA application that he was first impacted by COVID-19 on March 16, 2020, and he is a self-employed, independent contractor, or a gig worker and COVID-19 has severely limited his ability to perform his normal work.
3. The claimant filed the PUA claim using a New York address.
4. Prior to filing the PUA claim, the claimant lived in Massachusetts and worked as a manager of a restaurant in Massachusetts. The claimant last performed services for the restaurant on January 18, 2020.
5. The claimant owns twelve and one-half percent (12 ½%) of the restaurant. The restaurant is a Limited Liability Corporation (LLC) and partnership. The claimant has a 2019 Massachusetts K-1 reconciliation worksheet listing ordinary business income in the amount of \$9,132 [\$9,152] and guaranteed payments in the amount of \$61,967. The claimant has a 2020 K-1 listing ordinary business income in the amount of - \$1,601 and guaranteed payments in the amount of \$6,428.
6. In 2019 and 2020, the restaurant did not issue the claimant a W-2 form or a 1099-misc form. The claimant's income from the restaurant was reflected in his K-1.
7. The claimant has a 2019 Massachusetts tax return showing gross income to him from the restaurant of \$71,119. The payments to the claimant are reflected on a K-1 on his tax returns. The returns were filed in April 2020 [sic] and used a New York address.
8. The claimant has a 2020 Massachusetts non-resident tax return showing income to him from the restaurant of \$36,697. The payments to the claimant are reflected on a K-1 on his tax returns.
9. The claimant leased an apartment in [Massachusetts] since October 15, 2010. The claimant terminated his lease in January 2020 and made his final rent payment in the amount of \$1,200 on January 1, 2020.
10. The claimant stopped working at the restaurant on January 18, 2020. The claimant quit to move permanently to [New York] to live with his husband. The claimant's last check from the restaurant is dated January 18, 2020, in the amount of \$2,715.77. The restaurant remained open in 2020 after the claimant stopped working there, but on reduced hours.

11. The claimant was not experiencing symptoms of COVID-19 while he worked at the restaurant.
12. On January 23, 2020, the claimant saw his doctor. As part of his visit, the claimant reported developing cold like symptoms including a sore throat, nasal congestion, cough, headache, and fatigue the prior day. The doctor instructed the claimant to rest, increase his fluids, and take over the counter cold medications as needed.
13. The claimant was not diagnosed with COVID-19 in January 2020 and did not have a positive [COVID]-19 test result.
14. At his doctor's visit, the claimant informed his doctor of his intention to move to [New York] and transfer his medical care to New York. He also told his doctor of his upcoming travel plans to California and Hawaii and requested a 60-day supply of his relevant medication.
15. The claimant permanently moved to [New York] on February 5, 2020. He and his husband immediately travelled to California and Hawaii. The claimant and his husband returned to [New York] on or about March 5, 2020, where the claimant continued to physically reside throughout 2020.
16. The claimant was not experiencing COVID-19 symptoms when he returned from traveling or as of March 16, 2020, and he was never diagnosed with COVID-19 or received a positive test result.
17. The claimant did not stop working in Massachusetts in 2020 for any COVID-19 related reason. He stopped working at the restaurant to move to [New York] to live with his husband.
18. In late November 2020, the claimant and his husband signed a lease for an apartment in [New York] where they have resided since January 1, 2021.
19. The claimant did not return to work in 2020.

Credibility Assessment:

During the hearing, the documents submitted by the claimant were entered as remand exhibits. The claimant's spouse participated in the hearing. Prior to the hearing, the claimant had discharged the attorney who had been representing him. The claimant's testimony was credible and consistent throughout the hearing.

Although the claimant stopped working at the restaurant in mid-January of 2020, his choice to do so was unrelated to COVID-19. The claimant stopped working to move to [New York]. Any symptoms the claimant experienced did not occur until after the claimant quit his job at the restaurant. The claimant was never diagnosed

with COVID-19, nor did he ever receive a COVID-19 positive test result at any time.

As of March 16, 2020, the claimant was no longer living or working in Massachusetts. He had permanently moved to New York. Although he still had an ownership interest in the restaurant, he was not working there and had not worked there for over two months.

The claimant's testimony and submitted documentation supports [sic] a conclusion that he wanted to move to [New York] permanently in January 2020 and his move was completed by February 5, 2020. His Massachusetts work was not affected by the COVID-19 emergency, nor did it prevent him from working at that time.

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 he is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk). Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.²

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 when and why the claimant left his job and moved to New York, and, thus, whether he is eligible for benefits because he was unable to work due to the COVID-19 public health emergency.

After remand, the review examiner found that, while the claimant had worked in Massachusetts in January of 2020, he permanently separated from his employer as of January 18, 2020, because he intended to relocate to New York and live with his husband.³ See Consolidated Findings

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

³ We note that both the claimant's appeal to the Board and his appeal to the District Court were predicated on at least one misrepresentation by counsel, who contended, "While [he] had re-located to [New York] in search of

10, 14, 15, and 17. The review examiner further found that the claimant was not experiencing symptoms of COVID-19 while he worked at his Massachusetts-based restaurant employer, nor was he diagnosed with COVID-19 in January of 2020. *See Consolidated Findings ## 11, 13.* Further, the review examiner found that after moving in with his husband in New York on February 5, 2020, the claimant and his husband traveled to California and Hawaii, returning to New York on or about March 5, 2020. *See Consolidated Finding # 15.* The claimant did not experience COVID-19 symptoms when he returned from traveling and had not been diagnosed with COVID-19 as of March 16, 2020, the day after he claimed to have been impacted by COVID-19 on his PUA application. *See Consolidated Findings ## 1, 16.*

These findings establish that the claimant did not lose employment in Massachusetts in 2020 as a direct result of the COVID-19 emergency.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was out of work in Massachusetts for one of the eligibility reasons listed under § 2102(a)(3)(A)(ii)(I) of the CARES Act.


employment, he was not certain he was going to stay.... He had in fact traveled to California during the month of February for the same reason.” During the remand hearing, where the claimant appeared without counsel, he explicitly retracted that assertion as “inaccurate”; he had, in fact, intended to remain in New York with his husband. Moreover, he indicated that his travel to California (and Hawaii) in February of 2020 was to visit with family, rather than to look for employment. This information supplements the findings of fact and is part of the unchallenged evidence that came before the review examiner. *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).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 15, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 8, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

JPCA/rh