

**Claimant demonstrated that he experienced a significant drop in his customary work performing rideshare services with the onset of the COVID-19 public health emergency. He is eligible for PUA benefits.**

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

**Issue ID: N6-FJTV-JRNV**

### 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 15, 2020, which was denied in a determination issued on November 16, 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 10, 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 make subsidiary findings from the record pertaining to the claimant's 2020 rideshare work. 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 was ineligible for PUA benefits because he did not show that he had been performing his driving services at the onset of the COVID-19 public health emergency, 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 (PUA), effective March 15, 2020.

2. The claimant is a Massachusetts resident.
3. The claimant is an independent contractor who performs driving services.
4. In 2019, the claimant was a contractor for a rideshare application ([Company A]) and a taxi service ([Company B]).
5. The claimant's 2019 1099 from the ride share application shows gross earnings of \$39,942.71. The claimant reported \$39,473.00 from this business on a Schedule C attached with his 2019 Tax Return.
6. The claimant's 2019 Driver Total Report from the taxi service shows gross earnings of \$65,389.68. The claimant reported \$53,103.00 from this business [sic] a Schedule C attached with his 2019 Tax Return.
7. The claimant's 2019 Driver Total Report from the taxi service indicates he stopped working with the taxi service after September of 2019.
8. Earnings reports from the rideshare application show the claimant received gross earnings of \$596.46 from December 30, 2019, to January 5, 2020.
9. Earnings reports from the rideshare application show the claimant received gross earnings of \$1,465.09 from January 13, 2020, to January 19, 2020.
10. Earnings reports from the rideshare application show the claimant received gross earnings of \$1,410.76 from January 20, 2020, to January 26, 2020.
11. Earnings reports from the rideshare application show the claimant received gross earnings of \$1,358.89 from January 27, 2020, to February 2, 2020.
12. Earnings reports from the rideshare application show the claimant received gross earnings of \$1,258.48 from February 3, 2020, to February 9, 2020.
13. Earnings reports from the rideshare application show the claimant received gross earnings of \$3,445.31 in January of 2020.
14. The earnings are not shown directly on the claimant's January 2020 bank statements.
15. The claimant's January bank statements show transfers from a business account totaling \$3,955.00 during January, 2020.
16. Earnings reports from the rideshare application show the claimant received gross earnings of \$2,617.37 during February of 2020.

17. The claimant went on a personal trip to Haiti in February of 2020 and returned in March, 2020.
18. After the claimant returned from Haiti, he started working again for the rideshare application. Earnings reports from the rideshare application show the claimant received gross earnings of \$277.44 between March 9, 2020, and March 15, 2020.
19. The claimant's March bank statements do not show earnings from the ride share application or transfers from any business account.
20. The claimant's earnings after he returned from Haiti are significantly less than the earnings shown in January and February of 2020.
21. On November 16, 2020, the claimant was issued a Notice of Non-Monetary Issue determination. The notice states that beginning the week ending February 8, 2020, the claimant did not meet the eligibility requirements to qualify for benefits under the PUA program because they were not impacted by COVID-19.
22. The claimant appealed the determination.

#### Credibility Assessment:

The claimant is a Massachusetts resident. He is an independent contractor who performs driving services. The claimant's credibility is mixed. The claimant testified he drove for a taxi service and had the medallion taken from him in February of 2020 prior to his trip to Haiti. The evidence in the record shows no earnings from the taxi service after September 2019. There is no evidence he was working for the taxi service in 2020 prior to the onset of the COVID-19 pandemic. The claimant's testimony regarding his driving through the rideshare application is credible. The claimant stated that there was no work when he returned from Haiti. The evidence in the record shows the claimant experienced a significant decrease in earnings from the rideshare application during the week in March he attempted to work after returning from Haiti. The timeframe of the claimant's return and the decreased earnings also fits with when public fears surrounding the pandemic began to grow.

The claimant stated multiple times he was not working in March and initially only referenced work with the taxi service in January and February. It was not until late in the hearing that he remembered the work he did with the rideshare application. Overall, the claimant's memory regarding the work he performed and the timeframe he performed work with either the taxi service or rideshare application is inaccurate. However, the documents ultimately support his testimony that he was driving with the rideshare application prior to the effective date of his claim. The documents also support his testimony that his earnings were significantly

decreased when he returned from Haiti because of closures related 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for 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.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. To be considered a covered individual for PUA benefits, the claimant must self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk), is self-employed individuals who experienced a significant diminution of their customary services because of the COVID-19 public health emergency, even absent a suspension of services.<sup>2</sup>

After remand, the consolidated findings show that the claimant was self-employed as a rideshare driver from January to early March, 2020. They further show that he had been earning approximately \$1,200 to \$1,400 per week from January until he went on vacation around February 10, 2020. *See Consolidated Findings ## 9–12 and 17.* Upon returning to work from his vacation, during the week March 9–15, 2020, he made only \$277. *See Consolidated Findings ## 15 and 17.* We agree with the review examiner that this decline in business coincides with the onset of the COVID-19 public health emergency.<sup>3</sup> This establishes that the claimant sought PUA benefits because the COVID-19 public health emergency caused a significant diminution of his customary rideshare driving services.

We, therefore, conclude as a matter of law the claimant has met his burden to show that he lost work for a listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

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

<sup>2</sup> U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1)(kk), p. I-8.

<sup>3</sup> On March 10, 2020, the Governor declared a state of emergency due to COVID-19. *See Executive Order No. 591.*

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 6, 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](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.

AB/rh