

Work study student became unemployed for a listed reason under the CARES Act, and she is eligible for PUA benefits during weeks when she was scheduled to work at places that closed due to the COVID-19 public health emergency. She was also eligible for the period that she would have worked over the summer for an employer that rescinded that job offer due to state-ordered closures.

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

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 affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 2020, which was denied in a determination issued on November 20, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and awarded PUA benefits beginning June 13, 2020, in a decision rendered on March 11, 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, prior to June 13, 2020, 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 afford the claimant an opportunity to present evidence of her earlier work study employment. The claimant attended the remand hearing. 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 only eligible for PUA benefits due to losing a job offer for the summer of 2020, 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 effective March 15, 2020. The Department of Unemployment Assistance (DUA) determined the claimant's benefit rate would be \$267.00 per week.

2. The claimant is a Massachusetts resident and attended a Massachusetts university during the 2019-2020 academic year.
3. The 2020 spring semester at the claimant's college began on January 22, 2020.
4. The claimant is a work study student. The claimant did not participate in the work study program in the fall of 2019 because she was studying abroad. In previous academic years, the claimant's work study placement was in the early learning center on campus.
5. The claimant was offered a work study position in a café on campus on January 31, 2020. The claimant accepted the position. She did this work simultaneously with her work study position in the early learning center.
6. The claimant worked approximately 10 hours per week in the café and as needed in the early learning center, which was typically a few hours every two weeks.
7. The claimant worked at her work study job for the pay periods ending February 29, 2020 and March 14, 2020.
8. The claimant received payments from the college on February 21, 2020 and March 6, 2020. Funds were deposited into her bank account.
9. The spring break for the claimant's college was scheduled to begin March 14, 2020. The claimant intended to remain on campus and work during her spring break.
10. On March 16, 2020, the campus was closed. Students were ordered to leave campus for the remainder of the school year.
11. The last day of classes at the claimant's college were [sic] May 1, 2020. The campus was originally intended to close on May 17, 2020.
12. The claimant was not able continue working her work study employment after March 16, 2020. The claimant did not continue receiving any payments from the college. The pay period ending March 14, 2020 was the last time the claimant worked on campus.
13. The claimant completed a Department of Early Education and Care Essentials course on April 4, 2020 knowing it was a required qualification for the summer employment she was seeking at the early learning center.
14. In an email dated April 10, 2020, the Director of the early learning center informed the claimant that she was hired to work at the center during the summer of 2020.

15. On June 4, 2020, the Director of the early learning center informed the claimant that the early learning center was not going to open for the summer program.
16. The claimant's summer employment would not have begun prior to the June 4, 2020 email.
17. The claimant would have begun her employment at the early learning center if it remained open.
18. Classes for the 2020–2021 academic year at the claimant's college began on August 25, 2020. The entire academic year was remote. The campus did not open.
19. The claimant would have resumed her work study employment if the campus was open.
20. On November 20, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination informing the claimant they were not eligible to receive PUA benefits beginning the week ending February 8, 2020.
21. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant is a student at a Massachusetts university. She credibly testified she has been employed part-time on campus as a work study student since the 2017-2018 academic year. With the exception of the 2019 fall semester, the claimant worked during every semester she was on campus. The claimant worked during the 2020 spring semester was [sic] in a café on campus and in her work study job. She provided timesheet confirmations from her work study employment as well as bank statements showing direct deposits from the college payroll. The claimant's testimony is credible and corroborated by the timesheet confirmations and bank statements. The claimant's college campus closed indefinitely because of COVID-19. The claimant provided campus bulletins sent to all students regarding the closure. The claimant could not continue her employment once the campus closed.

The claimant was hired to work in the early learning center at her university during the summer of 2020. She was not able to start her employment because the summer program was cancelled due to the COVID-19 public health emergency. The claimant provided credible testimony and documentary evidence including emails from the Director of the program regarding her position and a certificate of completion of a course taken in preparation of her summer employment.

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 was ineligible for benefits for the entire period prior to the summer of 2020.

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. Among the requirements to be considered a covered individual is that the claimant self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). One of those listed reasons is § 2102(a)(3)(A)(ii)(I)(gg), which provides, “the individual was scheduled to commence employment and does not have a job . . . as a direct result of the COVID-19 public health emergency.” Further, § 2102(a)(3)(A)(ii)(I)(jj), lists as a separate qualifying reason that “the individual’s place of employment is closed as a direct result of the COVID-19 public health emergency.”

In his original decision, the review examiner concluded that the claimant was only eligible for benefits because she was scheduled to commence her summer job, and this job was cancelled due to COVID-19. Specifically, she was offered a job to work at the early learning center during the summer of 2020. *See* Consolidated Finding # 14. The claimant testified that this employment would have continued through the end of August.² However, this offer was rescinded on June 4, 2020. *See* Consolidated Finding # 15. As noted in the credibility assessment and Exhibit 4, this was due to a state-ordered closure of pre-school programs across the state in response to the COVID-19 pandemic.³ In light of this evidence, we agree with the review examiner that, during the summer of 2020, the claimant was eligible for benefits because she was scheduled to commence employment and did not have a job as a direct result of the COVID-19 public health emergency.

After remand, the consolidated findings show that the claimant also lost work before and after the summer because of the pandemic. During the spring, 2020, semester, the claimant had been working a part-time job at a campus café, as well as a few hours every couple of weeks at the early learning center, as part of work-study. *See* Consolidated Findings ## 5–8. She would have continued performing this work, but the campus was abruptly closed on March 16, 2020, students were sent home, and the claimant had to stop performing her work study jobs. *See* Consolidated Findings ## 10 and 12. As referenced in the credibility assessment, the school announcement

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

² This portion of the claimant’s testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

³ Exhibit 4 is an email from the claimant’s summer employer, dated June 4, 2020, explaining the reason for the closure. The information in this exhibit is also part of the unchallenged evidence introduced at the hearing.

(Exhibit # 3) explained that the campus shut-down was due to the COVID-19 public health emergency.

After the summer, the claimant would have resumed her work study employment on campus during the 2020–21 academic year but did not, because the entire academic year was conducted remotely and the campus did not re-open. *See* Consolidated Findings ## 18 and 19. Although not specifically addressed in the findings, we can reasonably infer that the on-going COVID-19 public health emergency drove the college’s decision to continue conducting its classes remotely during this next academic year. The campus closure extending into the 2020–21 academic year meant that the café and early learning center were also closed due to the pandemic. Thus, she was again unemployed because her places of employment closed as a direct result of the COVID-19 public health emergency.

We next consider whether there were any gaps in her eligibility for benefits. Consolidated Findings ## 11 and 16 show that, prior to the pandemic, the campus had been originally scheduled to close on May 17, 2020, and her summer employment would not have begun before June 4, 2020. The claimant testified that she did her work study only during the academic year.⁴ From this we can infer that, between May 17 and June 4, 2020, the claimant would not have been working. Thus, during these few weeks, she did not lose employment for a listed reason under the CARES Act.

However, we are satisfied that, beginning on June 5, 2020, the claimant remained seamlessly unemployed for listed COVID-19 reasons into the next academic year. This is because the record indicates that the claimant would have resumed her work-study jobs when the academic year was to begin on August 25, 2020. *See* Consolidated Findings ## 18 and 19. Because the record shows that the summer early learning center position would have extended to the end of August, 2020, and the next academic year began on August 25, 2020, it appears that her work study employment would have immediately followed the end of her summer job.

We, therefore, conclude as a matter of law that the claimant was unemployed for the listed reasons under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg) and (jj).

⁴ Again, this testimony is part of the unchallenged evidence.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the periods from March 15 through May 16, 2020, as well as beginning June 7, 2020, and for subsequent weeks if otherwise eligible. The claimant is not entitled to receive PUA benefits during period from May 17 through June 6, 2020.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 4, 2022



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.

AB/rh