

Tour manager for a music management company stopped performing services when COVID-19 restrictions cancelled music performances in March 2020. He is entitled to PUA benefits while those services were suspended and through the summer, when he had resumed his work on a significantly reduced basis.

**Board of Review
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Issue ID: N6-FJTV-LL5N

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 29, 2020, which was denied in a determination issued on November 17, 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 March 4, 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 working in Massachusetts when 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 to file a claim for PUA benefits in Massachusetts. 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 consider additional evidence of the claimant's work in Massachusetts just prior to filing his claim. 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 ineligible under his Massachusetts claim for PUA benefits because he did not establish that he had been working in Massachusetts in 2020, is supported by substantial and credible evidence and is free from error of law, where the claimant has now shown that he worked here as a music tour manager until those services were stopped due to the COVID-19 pandemic.

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 PUA benefits with an effective date of March 29, 2020.
2. The claimant filed the PUA claim using a New York Address. This is his parent's address.
3. Prior to filing for benefits, the claimant was a graduate student at a Massachusetts college.
4. The claimant also worked part time, from July 1, 2019, to March 31, 2020, as a tour manager for a classical music management company in Massachusetts. The management company is a registered Limited Liability Corporation (LLC) within the Commonwealth of Massachusetts. The claimant worked as a contractor for the management company at the rate of \$17 per hour.
5. The claimant's job duties included managing details of artist tours, arranging travel, and liaising with concert presenters when artists visited to perform.
6. The claimant lived and worked in Massachusetts from January 1, 2020, until on or about March 11, 2020, when he returned to his parent's home in New York. He continued to attend school remotely, until his graduation in May 2020.
7. The claimant has utility bills and bank statements for the months of January, February, and March 2020, that list his name and Massachusetts address. The internet and cable provider bills are each in the amount of \$54.87. The relevant bank statements list multiple transactions in and around [City A], Massachusetts and the corresponding debit withdrawals for the internet and cable bills.
8. The claimant continued to work remotely for the music management company until March 31, 2020, when Covid-19 health restrictions were imposed, causing musical venues to close and scheduled performances to be cancelled.
9. The claimant has a timesheet showing he performed 55 hours of services for the music management company in November 2019. The claimant's January 2020 bank statement shows a corresponding mobile check deposit on December 16, 2019, in the amount of \$935. The claimant's December 2019 timesheet shows he performed 51 hours of services. His February 2020 bank statement shows a mobile check deposit on January 31, 2020, in the amount of \$867. The claimant's January 2020 timesheet shows he performed 71 hours of services. The claimant also has an invoice dated January 31, 2020, that lists his name as the vendor. The invoice lists 71 hours of contractor work totaling \$1,207 and \$105.68 in expenses. His March 2020 bank statement shows a mobile check deposit on February 18, 2020, in the amount of \$1312.68.
10. The claimant did not perform any services for the music management company in April 2020. In May and June of 2020, the claimant performed occasional

services for the music management company remotely and as needed. The claimant returned to Massachusetts for a portion of the summer and returned to New York permanently on August 1, 2020. The claimant continued to provide services regularly to the music management company from his home in New York for the remainder of 2020 as virtual concerts continued to take place.

11. In 2019, the claimant's gross self-employment income from the music management company was \$5,312. His 2019 net income was \$385. In 2020, the claimant grossed \$10,812 in self-employment income from the music management company. His net income was \$9,817.

12. On November 17, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination COVID-19 Eligibility informing him that he was not eligible to receive benefits.

13. The claimant appealed the determination

Credibility Assessment:

During the hearing, the documentation requested by the Board of Review was entered into the record. The Board's remand order and questions were reviewed with the claimant. The claimant's testimony in response to the Board's questions was clear, credible, and consistent. Both the claimant's testimony and additional documents submitted, combined to provide a more complete view of the claimant's 2019 and 2020 work history with the music management company.

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. Based upon these consolidated findings, 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.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 criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if the person was "unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the

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

individual to suspend such activities.”² 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.³ Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

The review examiner’s original decision to deny benefits was based upon his conclusion that the claimant was not entitled to file a PUA claim in Massachusetts, because he filed his claim from a New York address and did not show that he had been working in Massachusetts in 2020. After remand, the consolidated findings now provide that the claimant had been performing services in Massachusetts as a tour manager for a classical music management company in 2020 before he stopped working on March 31, 2020. *See Consolidated Findings ## 4, 6, and 8.* Since he was working in Massachusetts at the time he became unemployed, the claimant is eligible to file a PUA claim here.

The consolidated findings also show that the claimant had to stop performing his services on March 31, 2020, because COVID-19 health restrictions caused scheduled musical performances to be cancelled, thus eliminating the need for him to manage the tours. *See Consolidated Finding # 8.* As a result, he had no hours of work through April, 2020. *See Consolidated Finding # 10.* These findings establish that the claimant was forced to suspend his customary work activities due to the COVID-19 public health emergency.

However, the claimant’s services resumed on a remote basis in May and June, 2020, though on a limited basis. *See Consolidated Finding # 10.* Even if not suspended, a significant diminution of a claimant’s customary or usual services due to the pandemic has also been determined to constitute an approved COVID-19 listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).⁴

Although not in the consolidated findings, the claimant testified that he continued to work reduced hours until around September 15, 2020, when he resumed his normal level of hours, and actually had even more work in the fall of 2020. This testimony is generally corroborated by a Quickbooks screenshot showing an August 25, 2020, payment from the music management company at about half his pre-pandemic level.⁵ Since the COVID-19 public health emergency was no longer causing a significant diminution of services as of the week beginning September 13, 2020, the claimant is not eligible for PUA benefits as of that week.

We, therefore, conclude as a matter of law that the claimant has established that he became unemployed or partially employed because of the COVID-19 public health emergency as meant under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

³ *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

⁴ *See* UIPL 16-20, Change 6 (Sept. 3, 2021), (kk)(1), p. I-3 – I-4.

⁵ The Quickbooks entry is part of Remand Exhibit 11. While this exhibit and the claimant’s testimony about when he resumed his normal hours are not explicitly incorporated into the review examiner’s findings, they are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits from March 29 through September 12, 2020, if otherwise eligible. The claimant is not entitled to receive PUA benefits as of the week beginning September 13, 2020, and thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 30, 2021



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.

AB/rh