

The documents the claimant presented and DUA's UI online system show that the claimant was paid for his internship until the end of the semester, although he was unable to finish his internship due to COVID-19. He did not have a firm offer of new employment or rescission of such offer from the employer. The documents the claimant submitted were letters of general intent to hire at some future date.

**Board of Review
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Issue ID: N6-FJV2-D74V

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 19, 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 from March 15, 2020, to May 9, 2020, and denied PUA benefits from May 10, 2020, and subsequent weeks, in a decision rendered on March 3, 2021. We accepted the claimant's application for review.

Benefits were allowed after the review examiner determined that the claimant had met his burden to establish that he was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 for a period of weeks, and, thus, the claimant was eligible for PUA benefits from March 15, 2020, to May 9, 2020. Benefits were denied from May 10, 2020, and subsequent weeks after the review examiner determined that the claimant had not met his burden to establish that he had a firm offer of employment that was rescinded due to COVID-19. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is entitled to receive PUA benefits from March 15, 2020, until May 9, 2020, and denied for the subsequent weeks, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant filed a claim for PUA benefits, with an effective date of March 15, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant filed the PUA claim using a Florida address.
3. The claimant was a student at a Massachusetts college. He worked at a local [Company A] as part of a school program.
4. The college closed due to COVID-19 restrictions.
5. The claimant has a March 18, 2020, e-mail from the school stating he would still be paid by his job, despite everything that was going on with the “virus.”
6. The claimant has a screen shot [sic] March 23, 2020, message from the employer stating they would enjoy the opportunity to hire the employees in the future.
7. The claimant graduated the college and is living in Florida.
8. On September 19, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020.
9. The claimant appealed the DUA’s determination.

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner’s conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s findings of fact and deems them to be supported by substantial and credible evidence. We agree with the review examiner’s legal conclusion that the claimant is not entitled to receive benefits from May 10, 2020, and for the subsequent weeks. However, as discussed more fully below, we disagree with the review examiner’s legal conclusion that the claimant is entitled to receive benefits from March 15, 2020, through May 9, 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 he is a covered individual within the meaning of the CARES Act.²

The claimant worked at a local [Company A] through his college internship program in Massachusetts in 2019 and early 2020. In March, 2020, the claimant lost his employment as a result of the COVID-19 emergency. However, the claimant presented evidence showing that the

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

² CARES Act, § 2102(a)(3)(A)(ii)(I).

college continued to pay the claimant for the remainder of the internship period despite the inability to work due to the pandemic. *See* Finding of Fact # 5. Moreover, the DUA's electronic record-keeping system for unemployment benefits, UI Online, shows the claimant's reported wages from his college in the first and second quarter of 2020 (January through June 2020). Although he stopped providing services in March, 2020, the claimant is not eligible to receive PUA benefits during the following weeks because he was paid for his employment.³

Next, we consider the claimant's testimony that he planned to continue working at the [Company A] as an employee after the end of the internship. PUA benefits are payable to individuals who were offered a job and were scheduled to begin that job, but the offer was rescinded due to the COVID-19 emergency.⁴ Although the e-mails the claimant submitted indicate that the employer had a desire to hire the claimant as an employee in the future, general statements such as these do not constitute a *bona fide* offer of employment or a rescission of such offer.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he was unemployed for a COVID-19 reason set forth under the CARES Act.

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits as of the week beginning March 15, 2020, and for subsequent weeks.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 9, 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

³ *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, (C)(1), p. I-4.

⁴ CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

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.

KB/rh