

**The claimant is a real estate agent in Massachusetts, who was unable to provide services beginning March 2020 to August 2020 due to COVID-19. She 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-FJV3-DMR6**

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 22, 2020, which was denied in a determination issued on November 13, 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 17, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that she was out of work as a result of the COVID-19 public health emergency and that she was working in Massachusetts at the time she was affected by COVID-19 in early 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 further evidence that she was working in 2020 and that her job was affected by COVID-19. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 failed to show that she was working in Massachusetts in early 2020 and that such job was affected by COVID-19, 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. In 2019 and 2020, the claimant was employed as a real estate agent. The claimant was licensed in Massachusetts.

2. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) with an effective date of March 22, 2020.
3. The claimant filed the PUA claim with a Connecticut address.
4. From March 28, 2020, through August 29, 2020, the claimant was unable to do her full-time real estate job or necessary work-related duties as a real estate agent as a direct result of the COVID-19 public health emergency. The claimant was unable to conduct open houses or work in person with her clients listing or viewing properties for sale. The claimant was also unable to perform market appraisal activities.
5. In March of 2020, the claimant spent approximately 31.5 hours a week sending out marketing mailings in the attempt to drum up business. None of these mailings led to any closings.
6. The claimant conducted an open house on August 29, 2020. It was at this time the claimant was able to continue conducting showing and meeting with clients and resumed her usual full-time hours.
7. On November 13, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020. She was informed that she was not eligible to receive benefits, because she failed to respond with the appropriate documentation by the due date.
8. The claimant timely appealed the November 13, 2020, Notice of Non-Monetary Issue Determination.
9. The claimant has her 2018 and 2019 Federal and State Income Tax Return showing her work as a real estate agent in Massachusetts.
10. The claimant's 2019 Form 1040 Schedule C Profit or Loss from Business shows the claimant earned \$15,531 from her real estate business.
11. The claimant's 2019 Form 1040 Schedule C Profit or Loss from Business shows the claimant earned \$10,855 from her real estate business.
12. The claimant's 2020 Federal and State Income Tax Returns are with her accountant ready to be filed pending the outcome of her hearing.
13. The claimant earns approximately \$25,000 to \$30,000 from her real estate business in a given year.
14. The claimant has a 2020 1099-NEC from her employer, listing a nonemployee compensation I the amount of \$40,827.38.

15. The claimant has copies of ten (10) commission checks she earned for work done in 2020 totaling \$40,827.38. These checks were earned as a result of her performing her real estate services.
16. The commission checks dated March 27, 2020, and June 3, 2020, were for services rendered prior to the COVID-19 public health emergency.
17. The commission check dated June 10, 2020, was for services the claimant rendered in June of 2020.
18. The commission check dated September 9, 2020, October 19, 2020, and November 11, 2020 were for services the claimant rendered in August of 2020.
19. The commission check dated December 2, 2020, and December 28, 2020 were for services the claimant rendered in November of 2020.
20. Since the effective date of her claim, the claimant has been able to work. No physical ailment has prevented her from working.

Credibility Assessment:

The claimant and her documentation are deemed to be credible. The claimant's testimony is corroborated by the documentation that she presented prior to her remand hearing.

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 failed to show that she was unemployed as a result of the pandemic and therefore, is not eligible for a Massachusetts PUA claim.

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 she is a covered individual within the meaning of the CARES Act. Further, a claimant must file for PUA benefits in the state where she was working at the time she became unemployed.<sup>2</sup> Therefore, in order to be eligible for

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

<sup>2</sup> See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-02, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. 1-3

benefits, the claimant must show that she had work in Massachusetts that was impacted by the COVID-19 pandemic.

The U.S. Department of Labor (DOL) interprets CARES Act, § 2102(3)(A)(ii)(I)(kk) to include self-employed individuals who experience a significant diminution of their customary or usual services because of the COVID-19 public health emergency.<sup>3</sup>

In this case, the claimant worked as a licensed real estate agent in Massachusetts prior to filing a PUA claim. *See* Finding of Fact # 1. Beginning March 28, 2020, despite her effort to bring in business, the claimant was unable to conduct open houses, work in person with her clients listing, or view properties for sale, which were her usual work duties, due to the pandemic. *See* Finding of Fact # 4. This loss of work falls within the DOL's interpretation of CARES Act, § 2102(3)(A)(ii)(I)(kk).

The claimant's testimony and the evidence presented show that the claimant's real estate work resumed back to normal on August 29, 2020. *See* Findings of Fact ## 6, 18, and 19. However, during the week ending June 13, 2020, the claimant was able to provide real estate services that generated income. *See* Finding of Fact # 17. The claimant is eligible to receive PUA benefits only during the weeks she experienced a significant diminution of her usual services because of COVID-19.

We, therefore, conclude as a matter of law that, from March 29 through June 6, 2020, the claimant was unable to work for a reason listed under the CARES Act. We further conclude that from June 14 through August 29, 2020, she was again unable to work for a reason listed under the CARES Act.

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<sup>3</sup> UIPL 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(I)(kk).

The review examiner's decision is affirmed in part and reversed in part. The claimant is eligible for PUA benefits from March 29 through June 6, 2020, and again from June 14 through August 29, 2020, if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 9, 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.

KB/rh