

The claimant is a Maine resident who did microblading/tattoo in Massachusetts. She established that she lost work when her place of employment closed due to the COVID-19 public health emergency. Board held that she was out of work for a listed COVID-19 reason under CARES Act § 2102(a)(3)(A)(ii)(I)(jj).

**Board of Review
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Issue ID: N6-FJV3-HN2N

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 on April 22, 2020, which was made effective February 2, 2020. Although initially approved, the DUA subsequently denied the claimant benefits in a determination issued on September 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 26, 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 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 consider the testimony regarding the claimant's loss of employment as a microblading services provider and tattoo artist in Massachusetts in 2020 and related internet payments, work licenses, and Massachusetts income tax documents. 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 original decision, which concluded that the claimant, a Maine resident, did not submit sufficient documentary evidence to show that she had been working in Massachusetts at the time she became unemployed due to 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) with an effective date of February 2, 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 lives in Maine and filed the PUA claim using her Maine address.
3. The claimant is self-employed and worked in Maine and Massachusetts as a microblade/permanent tattoo artist in 2019 and 2020.
4. Beginning January 1 and until mid-March 2020, the claimant performed microblading services in [City A], Massachusetts. The claimant performed these services until the Massachusetts salon she worked at was closed due to the government initiated COVID-19 restrictions on salons.
5. The claimant had earnings through an internet coupon company of \$222.51 that was paid on December 20, 2019.
6. The claimant had earnings through an internet coupon company of \$2,252.38 that was paid on January 6, 2020.
7. The claimant had earnings through an internet coupon company of \$763.68 that was paid on January 20, 2020.
8. The claimant had earnings through an internet coupon company of \$2,786.47 that was paid on February 20, 2020.
9. The claimant had earnings through an internet coupon company of \$23.45 that was paid on April 1, 2020.
10. The claimant had a valid City of [City A] Body Art Practitioner's license that expired April 30, 2021, that was required to be posted in a conspicuous place, and a separate valid individual practitioner license that expired on the same date.
11. The claimant also has a valid City of [City A] Body Art Practitioner's license that expires May 31, 2022, that is required to be posted in a conspicuous place and a valid separate individual practitioner license that expires on the same date.
12. On September 16, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Non-Monetary Issue Determination COVID-19 Eligibility, informing her that she was not eligible to receive PUA benefits beginning the week ending February 8, 2020.

Credibility Assessment:

The claimant offered fairly consistent testimony throughout both hearings. She provided additional documentation concerning her professional licenses, a 2020 federal tax return and evidence of her credit card payments and internet-based coupon payments.

The claimant has now presented valid licensure for 2020 and 2021. The claimant presented sufficient documentation to show that she had performed microblading activities in [City A], Massachusetts in January, and February 2020. When asked why she started her claim on February 2, 2020, she was vague. She testified that the business had really dropped off. The work she did involved doing close tattoo work on people's faces over multiple sessions. She testified that she was performing fewer services because her clients were cancelling appointments or pushing out appointments such that the work would need to be performed again by her at a later date at no charge. Although she testified that she was impacted in February 2020 and the start date of her claim is February 2, 2020, a review of payments she received shows she earned considerable money in the month of February. Charges show \$3,019 in January 2020 and \$2,786 in February 2020, then no payments in March 2020. The prior payments for December show [\$]222.51. As such testimony concerning a drop in business starting February 2, 2020, is not deemed credible.

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 does not meet the CARES Act eligibility requirements.

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 criteria for eligibility is § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act, which provides that an individual will be eligible for PUA benefits if the "individual's place of employment is closed as a direct result of the COVID-19 public health emergency". 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.² Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively impacted by the COVID-19 pandemic.

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

² See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sept. 3, 2021), 4(c), p. 7.

The claimant filed the PUA claim with a Maine address. *See Consolidated Finding # 2.* During the initial hearing, her testimony described how she had to stop working in Massachusetts at her salon due to the COVID-19 public health emergency. However, because she did not submit documentary evidence to support that testimony other than a 2019 Schedule C, as well as a 2019 expired [City A] Body Art Practitioner license, the review examiner concluded that the record lacked substantial evidence to show that she was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider whether additional documents that the claimant submitted with her Board appeal showed that she was working in Massachusetts in 2020.

After remand, the record in this case includes substantial evidence which establishes that the claimant was forced to stop performing work in Massachusetts due to the COVID-19 public health emergency. Beginning January 1 and until mid-March 2020, the claimant performed microblading services in [City A], Massachusetts. The claimant performed these services until the Massachusetts salon she worked at was closed due to the government initiated COVID-19 restrictions on salons. *See Consolidated Finding # 4.* The claimant submitted a 2020 Schedule C for the Massachusetts business. *See Remand Exhibit # 12.* The claimant also had earnings through an internet coupon company of \$2,252.38 that was paid on January 6, 2020, \$763.68 that was paid on January 20, 2020, \$2,786.47 that was paid on February 20, 2020, and \$23.45 that was paid on April 1, 2020. *See Consolidated Findings ## 6–9.* The claimant has valid City of [City A] Body Art Practitioner’s licenses that expired April 30, 2021. She also has a current license that will expire on May 31, 2022. *See Consolidated Finding # 9.*

The claimant has satisfied the eligibility criteria under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act. She has shown that her place of employment was closed as a direct result of the COVID-19 public health emergency. She has also met her burden to show that she is eligible to file a PUA claim in Massachusetts, because she was performing her services in Massachusetts at the time that she became unemployed.

Finally, we note that, during the initial hearing and remand hearing, the claimant testified that her benefit effective date was February 2, 2020. However, the claimant testified at the remand hearing that her last day of work was in mid-March 2020. *See Consolidated Finding # 4.* A review of the payments she received shows that she earned considerable money in the month of February. Therefore, she did not prove that she was negatively impacted by COVID-19 on February 2, 2020, but rather on March 15, 2020, when the state ordered all non-essential businesses closed.

We, therefore, conclude as a matter of law that that the claimant has met her burden to show that she was unable to work in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is denied PUA benefits from the week beginning February 2, 2020, through March 14, 2020. The claimant is entitled to receive PUA benefits starting with the week beginning March 15, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 30, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

TJG/rh