

Because the claimant had not been working at the time his children’s schools closed due to the COVID-19 public health emergency, he has not demonstrated that he was unemployed or unable to perform his work for this listed CARES Act reason under § 2102(a)(3)(A)(ii)(I)(dd). He is ineligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJV3-HP99

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 affirm.

The claimant filed a claim for PUA benefits with the DUA, effective March 15, 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 March 10, 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 had been working in Massachusetts in 2020 and became unemployed for a reason related to COVID-19 listed under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. 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 produce additional evidence of 2020 employment and why he could not perform that work. 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 not eligible for PUA benefits because he was not working when affected by the COVID-19 pandemic, 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) benefits, with an effective date of March 15, 2020.
2. The claimant filed the PUA claim using a New Hampshire address.
3. In 2019, the claimant worked as an independent contractor for a janitorial company that provided cleaning services at various locations. The company was sold to another janitorial company in 2019, and the claimant lost his job.
4. The claimant did not perform any cleaning services in 2020.
5. The claimant's wife is employed full-time as a vocational-school teacher and part-time at a café in Massachusetts. She also runs a catering business seasonally, attends college part-time and teaches cooking classes online. The number of hours she works at the catering business is dependent upon when she has an event.
6. Prior to filing for PUA, the claimant was the primary caregiver to their two school aged children and occasionally helped his wife with her catering business.
7. The claimant has no documentation showing he performed services for his wife's catering business in 2019 and/or 2020.
8. The claimant's children are 8 and 10. The children had to be home schooled after the public health emergency was declared in March 2020 and the claimant assisted his children with their remote learning. The children attended school remotely for the remainder of 2020. The children did not return to in-person learning until September of 2021.
9. The claimant's wife was unable to care for the children because she was teaching classes online and attending to administrative matters for her catering business, such as rescheduling cancelled events and seeking new catering opportunities. She also worked up to 20 hours per week at a café in Massachusetts and attended college online part-time.
10. As a result of the COVID-19 restrictions on gatherings, the catering business was closed between March of 2020 until September 5, 2020. The catering business in 2020 consisted of 2 small outdoor events in the fall.
11. When the claimant was not assisting his children with remote learning, he was taking care of his parents who lived in Massachusetts. The claimant's parents both had compromised immune systems and could not leave their home except for medical appointments. The claimant's father has a heart condition, and his mother suffers from COPD. The claimant helped with house cleaning, laundry, food shopping, transportation, errands, and general assistance.

12. The claimant's parents were never diagnosed with COVID-19.
13. If the claimant did not have childcare responsibilities or the need to care for his parents during the period from March 15, 2020, to November 2020, he would have been otherwise able and available to work.
14. In November of 2020, the claimant began working evenings as a security guard in Massachusetts.

Credibility Assessment:

During the remand hearing, the claimant's tax documentation was entered into the record, and the Board's remand order and questions were reviewed with the claimant. The claimant responded to the questions, and no further evidence or testimony was needed for the review examiner to render these consolidated findings of fact and credibility assessment.

The claimant credibly testified that he lost his employment as a cleaning contractor in 2019 when the company he contracted with was bought out and his services were no longer needed.

The claimant was also forthright and candid as to his family's financial situation and the challenges he balanced after the pandemic was declared in March 2020. These included being the primary caregiver to his children who were remote learning, and to his elderly parents who had health issues and concerns with contracting the virus.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except the portion of Consolidated Finding # 3, which indicates that the claimant lost his job as a result of the sale of the janitorial company. Similarly, we believe the review examiner's credibility assessment is reasonable in relation to the evidence presented, except for the portion which states the same thing. Remand Exhibit 7 is a 2019 Form 1099 showing that the claimant performed services for the new company.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Based upon the consolidated findings, we agree with the review examiner's legal conclusion that the claimant is not eligible 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.² In

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

²Pub. L. 116-136 (Mar. 27, 2020), § 2102.

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 requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed, partially unemployed, or unable or unavailable to work for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Further, a claimant must file for PUA benefits in the state where he was working at the time that he 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.

During the original hearing, the claimant testified that he continued to perform services for the janitorial company at various Massachusetts locations in early 2020, with the same work schedule that he had been working in 2019. He further testified that when the pandemic hit, he had to stop working to take care of his children, whose school had shut down and were learning remotely. We remanded the case to consider whether the claimant could produce documentary evidence of his 2020 work and to inquire further about the reasons for his inability to perform such work. For the remand hearing, the claimant clarified that he stopped working for the janitorial company in 2019. He performed no cleaning services in 2020. *See Consolidated Findings ## 3 and 4; see also Remand Exhibit 9.*⁴

To be sure, lack of childcare, such as school closures due to the COVID-19 public health emergency, is one of the listed reasons for PUA eligibility under the CARES Act. Section 2102(a)(3)(A)(ii)(I) states:

(dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency *and such school or facility care is required for the individual to work.*

(Emphasis added.) This provision requires the individual to demonstrate that he had work which he was unable to perform. Here, although the claimant was his children’s primary caregiver, he was *not* working at the time his children’s school closed in March, 2020. *See Consolidated Findings ## 4, 6, 8, and 9.* Therefore, he was not unemployed or unable to perform his work because their school closed.

The consolidated findings also show that, during the time he sought PUA benefits, the claimant was also caring for his parents, who live in Massachusetts, assisting them with activities of daily living. *See Consolidated Finding # 11.* This demand on his time also does not constitute a qualifying reason for PUA benefits. He was not caring for them because either had been diagnosed with COVID-19, nothing in the record shows that they would normally be in a facility but for the COVID-19 public health emergency, and, again, he did not demonstrate that he lost work as a result of this care. *See Consolidated Findings ## 11 and 12.*⁵ The need to care for his parents,

³ *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

⁴ Remand Exhibit 9 is a detailed statement which the claimant wrote in response to the Board’s remand questions. It states that the janitorial company did not need his services in 2020. This statement is also part of the unchallenged evidence in the record.

⁵ CARES Act, § 2102(a)(3)(A)(ii)(I)(cc), states, “The individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID-19.”

though undoubtedly burdensome, did not cause the claimant to be unemployed or unable to work because of a listed COVID-19 reason under the CARES Act.

We, therefore, conclude as a matter of law that the claimant has not demonstrated that he was out of work for a qualifying reason under the CARES Act, § 2102(a)(3)(A)(ii)(I).

The review examiner's decision is affirmed. The claimant is not entitled to receive PUA benefits as of the week beginning March 15, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2021



Paul T. Fitzgerald, Esq.
Chairman



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