

**The claimant, a work-study student working as a teacher, was unemployed due to a reason set forth under the CARES Act, as her place of employment closed as a direct result of the COVID-19 emergency. Because the job was scheduled to end in mid-May of 2020, the claimant is not eligible to receive benefits beginning May 17, 2020. In addition, she failed to show that she was unemployed from her second job later in 2020 when she moved to her parents' homes due to a general concerns about COVID-19 in her living situation.**

**Board of Review  
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**Issue ID: N6-FJV4-DM2L**

### 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 8, 2020, which was denied 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 January 6, 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 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 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 early 2020 and that she became unemployed due to 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. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective March 8, 2020.
2. The claimant filed her claim with a Florida address.
3. In 2019, the claimant worked part-time, for approximately 6 to 10 hours per week, as a hostess at a restaurant near her family home in Massachusetts. The claimant has a 2019 W-2 from this position, listing wages as \$2,063.07.
4. Beginning in the fall of 2019, the claimant was a full-time student at a Massachusetts based university where she lived on campus. The claimant has an account detail document from this university, showing charges for a “base room fee,” dated December 13, 2020.
5. While attending school, the claimant worked at a local elementary school as part of a work study program. The claimant has a W-2 from 2020, issued by her Massachusetts based university, listing her wages as \$650.26. The claimant’s last day of work at the teaching position was on March 4, 2020, prior to her taking time off for spring break.
6. On March 13, 2020, the Massachusetts based university distributed an email stating that in-person classes, as well as other in-person educational experiences, would be suspended until the end of the semester, due to the COVID-19 public health emergency.
7. The claimant intended on returning to work on Wednesday, March 18, 2020, but could not because her university had cancelled all in-person educational courses, including off-campus work study programs because of the COVID-19 outbreak.
8. On March 18, 2020, the claimant and her family flew to Florida to visit her ill grandmother. The trip was intended to be one week long but ultimately got extended because of the CDC recommendations to refrain from air travel.
9. The claimant has an email thread between her and her elementary school work study supervisor, dated March 26, 2020. The initial email was from the claimant informing her supervisor that her work this semester was being cut short. To which her supervisor responded that they would love to have her back next semester.
10. The claimant returned from Florida on May 19, 2020 because her university informed students they were required to clean out their dormitories or else their belongings would be disposed of. Following her return to Massachusetts, the claimant would split time between her mother’s and father’s homes, both located in Massachusetts.

11. On July 21, 2020, the claimant signed a lease with her classmates for an apartment off-campus [near] the Massachusetts based university.
12. After returning to the town of her university on August 8, 2020, the claimant began working part-time, for approximately 21 hours per week, as a private, in-person tutor. The claimant has a 2020 W-2, for her work performed, listing her wages as \$2,112.50. The claimant quit her job in October 2020, when unsafe living conditions in her local apartment forced her to retreat back to her parents' homes in Massachusetts.
13. The claimant has not returned to working nor in-person classes.

#### Credibility Assessment:

The claimant's testimony regarding her 2020 work is deemed credible. The claimant provided credible documentation showing that she attended university and worked in Massachusetts in 2020 when her work study position ended, and she was forced to return home in March due to the campus closing as a result of the COVID-19 public health emergency. Additionally, the claimant offered credible testimony and documentation of her secondary 2020 position, located near her Massachusetts based university, and its ended being brought [sic] on by unsafe living conditions which forced her to quit and relocate to her parents' homes.

#### 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. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk). One of those listed reasons is that an individual's place of employment closed as a direct result of the COVID-19 public health emergency. *See* § 2102(a)(3)(A)(ii)(I)(jj). Further, a claimant must file for PUA benefits in the state where she was working at the time that 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) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. 1-3

benefits in Massachusetts, the claimant must show that she had work in Massachusetts and that she became unemployed for a listed COVID-19 reason under the CARES Act.

In this case, the claimant testified that she worked at a local elementary school as part of a work study program in early 2020 and submitted a W-2 from 2020, issued by her Massachusetts-based university. *See Consolidated Finding # 5.* The claimant testified that she was unable to continue working at the elementary school because the elementary school closed in March 2020 due to the COVID-19 public health emergency. *See Consolidated Finding # 7.* This evidence establishes that the claimant became unemployed for the CARES Act listed reason under § 2102(a)(3)(A)(ii)(I)(jj).

However, the claimant testified during the remand hearing that her work study program was scheduled to end by the end of the semester, which was in mid-May of 2020, and that the position would not have continued through the summer.<sup>3</sup> The claimant is eligible to receive PUA benefits only during the weeks her employment was affected by COVID-19.

In August 2020, the claimant returned to her university town in Massachusetts and began working as a part-time tutor. The claimant submitted a second W-2 from 2020, which shows her wages from the tutoring job. *See Consolidated Finding # 12.* The claimant testified that, in October, 2020, due to the claimant's unsafe living condition related to COVID-19, where the claimant's roommates were not social-distancing, the claimant decided to move out of her apartment located in her university town and back into her parents' homes. As a result of her move, she had to quit her tutoring job. *See Consolidated Finding # 12.* This general fear about exposure to COVID-19 in her living situation, without further evidence that the claimant had an underlying condition that places her at risk for COVID-19 or was advised by a health care provider to self-quarantine due to concerns related to COVID-19, is not one of the reasons set forth under the CARES Act.<sup>4</sup> Here, there is no indication in the record of such condition or advice by a health care provider.

We, therefore, conclude as a matter of law that the claimant lost her work-study job at the local elementary school in early 2020 and has shown that she was unable to work for the rest of the semester for a reason listed under the CARES Act. However, the claimant has not shown that she was unable to work due to one of the reasons under the CARES Act for the subsequent weeks.

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<sup>3</sup> 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).

<sup>4</sup> *See* UIPL 16-20, Change 1, Attachment I, F, Question 41.

The review examiner's decision is affirmed in part and reversed in part. We affirm the part of the decision denying benefits to the claimant for the weeks beginning May 17, 2020, and for subsequent weeks. However, we reverse the part of the decision denying benefits to the claimant beginning March 8, 2020, to May 16, 2020, as the claimant is entitled to benefits during those weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 13, 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](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