

The claimant, a full-time student at a Massachusetts college, worked part-time as a student grader for two professors. After the college transitioned to remote learning, the claimant experienced a decrease in available hours of work. He was, therefore, eligible for PUA benefits until final grades were due, as the claimant necessarily would not be able to perform wage-earning services as student grader after final grades had been submitted.

**Board of Review
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Issue ID: N6-FJV4-VF49

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 23, 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 25, 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 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 obtain additional information about the claimant's employment status in 2019 and 2020. 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 benefits because there was no indication from the record that he experienced a decrease in hours due to 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) with an effective date of March 15, 2020.
2. The claimant filed the PUA claim with a Connecticut address.
3. On November 23, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing the claimant that he was not eligible to receive benefits beginning the week ending February 8, 2020. He was informed that he was not eligible to receive benefits, because he failed to respond with the appropriate documentation by the due date.
4. The claimant was enrolled in an undergraduate course of study at a university in Massachusetts. The claimant was living on campus while he was enrolled in courses.
5. Prior to filing his PUA claim, the claimant was employed by his university working as a lifeguard and student grader for two professors.
6. The claimant has paystubs for work done at his university with pay periods from August 18, 2019, through December 27, 2019, and January 18, 2020, through May 9, 2020. The paystubs list the employer, the employer's address, claimant's address, wages, hours worked, year to date earnings, and deductions. The paystubs have the same logo for the university the claimant worked at and attended.
7. The paystubs from August, 2019, through December 27, 2019, show a rate of pay of \$12.50, while the paystubs from January 18, 2020, through May 9, 2020, show a rate of pay of \$12.75.
8. Each pay stub, except for the paystub for the period from April 26, 2020, through May 9, 2020, list "Lifeguard" as the claimant's position. The April 26, 2020, through May 9, 2020, [sic] lists the claimant's position as a "Student Grader".
9. The claimant was not working as a student grader prior to the Spring 2020 semester. The claimant only worked as a student grader in the Spring 2020 semester.
10. The claimant graduated from his university on May 16, 2020.
11. The claimant does not have documentation showing that work was available to the claimant after his graduation date.
12. The claimant was able to work. No physical ailment prevented him from working.

13. The claimant timely appealed the November 23, 2020, Notice of Non-Monetary Issue Determination.

Credibility Assessment:

The claimant testified at the Remand Hearing that he was a student grader during the Fall 2019 semester and worked approximately 77 hours during that time. The claimant submitted paystubs for the Fall 2019 semester and a letter from the university's Human Resources to confirm that. The submitted paystubs show that the claimant was a "Lifeguard" up until April 26, 2020, at which point the position is changed on the paystub to "Student Grader". The letter from Human Resources only states that the claimant was a "Student Worker," with no specific information about the type of work the claimant did. The claimant submitted no documentation to indicate that he was in fact working as a Student Grader during the Fall 2019 semester, or at any point prior to the end of the Spring 2020 semester. The claimant's testimony regarding being a student grader during the Fall 2019 semester is deemed to be not credible.

The claimant testified at the Remand Hearing that work was available to him through his university after he graduated but was unable to provide any documentation showing that. The claimant relied on past work done after a semester had ended, however, that work would have been done while he was still a student at the university. Such a situation is different from one where the claimant graduated from the college and was no longer enrolled. The claimant was unable to provide any documentation showing that work was available to him after he graduated from the university. His testimony regarding said available work is deemed to be not 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 9, which states that the claimant did not perform student grader work before the spring 2020 semester, as inconsistent with the evidence of record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further reject the portion of the review examiner's credibility assessment finding the claimant's testimony that he did not work as a student grader in the fall of 2019 not credible. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant failed to establish his eligibility for PUA benefits during the period on appeal.

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

¹ Pub. 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. Pursuant to the provisions of the CARES Act, the U.S. Department of Labor (DOL) has issued guidance about qualifying for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), specifies that full-time students may be eligible for PUA benefits so long as they are unemployed or partially unemployed for a qualifying reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk) of the CARES Act.² Among the criteria for eligibility established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, is that an individual will be eligible for PUA benefits if they were “unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities.”³

The claimant was a full-time student living and studying at a college in Massachusetts. Consolidated Finding # 4. While studying at this college, he worked part-time first as a lifeguard and then as a student grader for two professors. Consolidated Finding # 5. In his credibility assessment, the review examiner rejected the claimant’s testimony that he began working as a student grader in the fall semester of 2019, because a letter from the claimant’s employer did not identify his specific position as a student grader. Such assessments are within the scope of the fact finder’s role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). “The test is whether the finding is supported by “substantial evidence.”” *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Upon review of the record, we reject this portion of the review examiner’s credibility assessment.

The letter referenced in the credibility assessment, which was admitted into the record as Remand Exhibit 12, specifically states that the claimant was employed as a student grader from September 10, 2019, through May 29, 2020.⁴ Therefore, the review examiner’s basis for rejecting the claimant’s testimony that he had been employed as a student grader since the fall semester of 2019 is unreasonable in relation to the evidence presented.

At both hearings, the claimant testified that he saw a substantial decrease in available hours after his college transitioned to remote learning as a result of the COVID-19 pandemic. Comparing the claimant’s paystubs from the fall semester of 2019, which were admitted into evidence as Remand Exhibits 19–23, with his paystubs from the spring semester of 2020, which were admitted into evidence as Remand Exhibits 9–11 and 13–15, corroborates the claimant’s testimony in this

² See UIPL 16-20, Change 1, Attachment I, D(28), p. I-7.

³ UIPL 16-20, Attachment I, C(1)(k), p. I-6 (Apr. 5, 2020).

⁴ Remand Exhibit 12 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

regard.⁵ As such, we conclude that the claimant met his burden to show that he was working in Massachusetts when he became partially employed for a qualifying COVID-19 reason listed in § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

However, the claimant's work as a student grader necessarily would have ended on the date that final grades were due. The college's academic calendar, admitted into the record as Remand Exhibit 8, shows that final grades were required to be submitted on May 11, 2020.⁶ The claimant then graduated on May 16, 2020, the same week that final grades were due. *See* Consolidated Finding # 10. As this work would not have been available to the claimant after he graduated regardless of the impact of the COVID-19 pandemic, the record shows he was not out of work for a listed reason under the CARES Act after graduation.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that, during his spring 2020 college semester, he experienced decreased work in Massachusetts which met one of the eligibility criteria established by the Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020, through May 16, 2020. The claimant is ineligible for PUA benefits from the week beginning May 17, 2020, and for subsequent weeks thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 30, 2021



Paul T. Fitzgerald, Esq.
Chairman



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:

⁵ This portion of the claimant's testimony and Remand Exhibits 9–11, 13–15, and 19–23 are also part of the unchallenged evidence introduced at the hearing and placed in the record.

⁶ Remand Exhibit 8 is also part of the unchallenged evidence introduced at the hearing and placed in the record.

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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.

LSW/rh