

The claimant was a full-time student working part-time for a college in MA when the college shut down in-person classes due to COVID-19. As a result of the shutdown, the claimant was unable to continue her employment. She did not present sufficient evidence to show that she would have continued her employment after her graduation in May 2020. The claimant was eligible for PUA benefits during the time between the effective date of her claim and her date of graduation, and ineligible thereafter.

**Board of Review
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Issue ID: N6-FJV5-2DVH

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 1, 2020, which was denied in a determination issued on September 15, 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 7, 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 additional documents submitted by the claimant and to obtain more information regarding the claimant's 2020 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, a New York resident attending school in Massachusetts, failed to provide sufficient documentation to establish that she was working in Massachusetts in 2020, 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 for a Pandemic Unemployment (PUA) claim, effective March 1, 2020.
2. On September 16, 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.
3. The claimant filed the claim using a New York address.
4. Prior to filing her PUA claim, the claimant was enrolled at a college in Massachusetts. She worked at the college as a commuter advisor and admissions ambassador. The claimant received a 2020 W-2 from the university.
5. During the second week of March 2020, the claimant's school closed because of the COVID-19 emergency. The claimant had to stop working and return to New York.
6. In 2019, the claimant worked at the college during the summer.
7. The claimant graduated from the college on May 17, 2020.
8. The claimant would not have worked at the college during the summer of 2020.
9. In August 2020, the claimant enrolled in graduate school at a university in [Town A], Massachusetts.
10. On August 26, 2020, the claimant started working part-time at the university as an educational coach. The claimant currently works at the university. Her job at the [Town A] university was not impacted by the Pandemic.
11. In November 2020, the claimant started working as a part-time hall director at an engineering school. She currently works at the engineering school. Her job at the engineering school was not impacted by the pandemic.
12. From March 9, 2020, until August 23, 2020, the claimant received PUA benefits from the state of New York. As of the date of the remand hearing, her New York claim is inactive.
13. The claimant was never disqualified from receiving benefits from the state of New York.

Credibility Assessment:

The claimant provided credible testimony and documentation showing that she worked at a Massachusetts college in 2020, and that she had to stop that work due to the pandemic. In support of her testimony, the claimant provided a 2020 W-2 from the college. In addition, the claimant submitted a screen shot from the college's website showing that the college continued remote classes for the remainder of the spring semester. The claimant also provided a picture of her diploma, which shows that she graduated from the college in 2020.

However, the claimant did not provide substantial and credible evidence showing that she would have worked at the college during the summer of 2020. The claimant testified that she intended to work at the college until August 2020. The claimant testified that she worked at the college during the summer of 2019. In support of her testimony, the claimant submitted a letter from the college's assistant dean stating that she had several conversations with the claimant about the possibility of her working at the college over the summer. The letter states that nothing was set in stone. In addition, the letter does not say that the claimant was scheduled to work at the college during the summer of 2020. Moreover, the letter does not say that the claimant could have worked at the college over the summer of 2020.

The claimant testified that she started working part-time at a university in August of 2020. She provided a 2020 W-2 form from the university. She further testified that her job was not impacted by the pandemic. The claimant also testified that in November of 2020, she started working at an engineering school. She provided a 2020 W-2 form from the engineering school. She credibly testified that her job at the engineering school was not impacted by the pandemic.

The claimant credibly testified that from March 9, 2020, until August 2020, she received PUA benefits from the State of New York. She further testified that she was never disqualified from receiving benefits. In support of her testimony, the claimant provided a screen shot of her PUA account, which shows she received benefits until August 23, 2020. She also provided another screen shot, which shows her New York effective date and weekly benefit amount.

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 did not establish that she was out of work due to a listed COVID-19 reason.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (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. 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 filed a claim for PUA benefits with an effective date of March 1, 2020. Consolidated Finding # 1. At the beginning of 2020, the claimant was a full-time student living and studying at a college in Massachusetts. Consolidated Finding # 4. The claimant worked at the college as a commuter advisor and as an admissions ambassador until the second week of March 2020, when the college closed its campus and went to fully remote learning due to the COVID-19 pandemic. Consolidated Findings ## 4 and 5. As a result, the claimant had to return home to New York. Consolidated Finding # 5. The college closure caused the claimant to stop performing her job in Massachusetts. Consolidated Finding # 5. These findings establish that the claimant was working in Massachusetts when the COVID-19 public health emergency severely limited her ability to continue performing her job.

However, the claimant’s job with her college would have ended when she graduated in May 2020. Consolidated Finding # 8. As there is insufficient evidence to show that she was going to continue her employment following her graduation, she was no longer unemployed for a qualifying COVID-19 reason after May 17, 2020.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work in Massachusetts for 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 from the week beginning March 1, 2020, until she graduated from college.

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 1, 2020, through May 16, 2020, if otherwise eligible. The claimant is not entitled to 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

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

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

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



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.

CLC/rh