

**Student is eligible for PUA benefits when she had to stop working as a dormitory desk assistant during the spring 2020 semester and could not work in the fall 2020 semester, because she was remote learning due to the COVID-19 public health emergency.**

**Board of Review  
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**Issue ID: N6-FJV5-9JL4**

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 November 17, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner partially overturned the agency's initial determination by awarding PUA benefits from March 8, 2020, through May 30, 2020, but affirmed the denial of benefits thereafter, in a decision rendered on February 24, 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 scheduled to work in Massachusetts and that her work was impacted by the COVID-19 pandemic after May 30, 2020, and, thus, the claimant was not eligible for PUA benefits as of May 31, 2020. 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 give the claimant an opportunity to present additional evidence about her Massachusetts employment in 2020. The claimant attended both days of 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 ineligible for PUA benefits because she failed to carry her burden to show that she was working or scheduled to commence employment in Massachusetts any time after May 30, 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 a claim for PUA benefits, with an effective date of March 8, 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 filed the PUA claim using a New Hampshire address.
3. In 2020, the claimant was a student at a Massachusetts college. She worked as a desk assistant at a dormitory.
4. The claimant's paycheck for the period from February 23, 2020 to March 7, 2020 shows gross pay of \$182 for those two weeks, with year-to-date gross earnings of \$546.
5. The claimant's spring 2020 semester at school, and job as a desk assistant, would have ended on May 11, 2020, the last day of finals.
6. The claimant did not have an offer of employment for the summer 2020 period at the school.
7. The claimant has a February 21, 2020, letter offering her employment for the fall 2020 semester pending formal application by the closing date March 6, 2020.
8. The claimant applied for the fall 2020 semester in a timely manner on February 21, 2020, and had the required minimum GPA to be eligible for the position. The school required a 2.5 GPA. The claimant's GPA was 3.585.
9. The claimant was not able to work at the fall 2020 position because only students who lived in the [City A] area were able to work on campus. The claimant was living in New Hampshire and attending school remotely due to the school closure because of the COVID-19 pandemic.
10. The job during the fall 2020 semester was scheduled to begin on August 26, 2020.
11. The job during the fall 2020 semester would have ended on or about December 15, 2020.
12. On November 17, 2020, the DUA sent 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.
13. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant's testimony about her job at the school during the fall 2020 semester was credible. The claimant provided a letter from the claimant's school employer dated March 3, 2021, stating that the student worker positions were available only to students who lived in the [City A] area for the fall 2020 semesters due to COVID-19 restrictions. The claimant submitted proof that she applied for the fall 2020 semester job in a timely manner on February 21, 2020 and had the required minimum GPA to be eligible for the position. That position was due to start on August 26, 2020. The claimant confirmed that the school fall 2020 academic calendar shows the last day of the winter term was December 15, 2020. The claimant credibly testified that she did not have an offer of employment for the summer of 2020 at the school. The spring 2020 semester ended on May 11, 2020, on the last day of finals.

### 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not meet her burden to show that her Massachusetts work was impacted by the COVID-19 pandemic for the entire period after May 30, 2020.

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. 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) of the CARES Act.<sup>2</sup> Among the criteria for eligibility is § 2102(a)(3)(A)(ii)(I)(jj), which is that "the individual's place of employment is closed as a direct result of the COVID-19 public health emergency."

Here, the claimant was a full-time student living and studying at a college in Massachusetts. Consolidated Finding # 3. She worked as a desk assistant at a dormitory through March 7, 2020, and the college had closed its campus and sent students home as a result of the COVID-19 pandemic. *See* Consolidated Findings ## 3, 4 and 9. The college closure and directive that the claimant return to her home, which was located in New Hampshire, caused the claimant to stop

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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, D(28), p. I-7.

performing her job in Massachusetts. *See Consolidated Findings ## 2 and 5.*<sup>3</sup> Had it not closed its campus, the claimant would have continued working at her job through the end of the spring 2020 semester. *See Consolidated Finding # 5.*

As such, we agree with the review examiner’s original conclusion that the claimant met her burden to show that she was working in Massachusetts and was scheduled to continue working through the end of the spring 2020 semester, but she became unemployed when her place of employment closed as a direct result of the COVID-19 public health emergency. She is eligible for PUA benefits through May 30, 2020.

We also agree that the claimant did not establish that she had worked or had been scheduled to work in Massachusetts during the summer 2020 semester. *See Consolidated Finding # 6.* Since she did not lose employment during this time, she is not eligible for benefits during this period.

On remand, however, the review examiner found that the claimant had received an offer of employment for the fall 2020 semester, had submitted a formal application, and had exceeded the college’s GPA minimum requirement to be eligible for the fall 2020 desk assistant position. Consolidated Findings ## 7 and 8. The position was scheduled to begin on August 26, 2020, and conclude on or about December 15, 2020. Consolidated Findings ## 10 and 11. The review examiner further found that the claimant was unable to work at the position during the fall 2020 semester because only students who lived in the [Town A] area were able to work on campus, and the claimant lived in New Hampshire, where she had been attending classes remotely due to the ongoing COVID-19 pandemic. Consolidated Finding # 9.

Another listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg), is “the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.” Here, the claimant has shown that she was scheduled to commence work at the start of the fall 2020 semester but did not have a job as a direct result of the COVID-19 public health emergency. Thus, she is eligible for PUA benefits again during the fall 2020 semester.

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 the reasons listed in § 2102(a)(3)(A)(ii)(I)(gg) and (jj) of the CARES Act.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is eligible for benefits for the period March 8, 2020, through May 11, 2020, as well as from the week beginning August 23, 2020, through December 15, 2020, if otherwise eligible. She is denied benefits for period May 12, 2020, through August 22, 2020.



Charlene A. Stawicki, Esq.

**BOSTON, MASSACHUSETTS**

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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).

**DATE OF DECISION - March 8, 2022**

Member



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:  
[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.

JMO/rh