

The claimant sustained her burden to show that she lost her two-day old job in Massachusetts as a result of the COVID-19 public health emergency. Held she is eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJV6-KMTT

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 8, 2020, which was denied in a determination issued on November 19, 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 failed to show that she was working in Massachusetts in 2020, or that she had work which was impacted by the COVID-19 pandemic. 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 work activities in 2020. 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 was not eligible for PUA benefits because she failed to show that she was working in Massachusetts in 2020, and that her work was impacted by the COVID-19 public health emergency, 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 08, 2020.
2. The claimant filed the claim for PUA benefits using a Rhode Island address.

3. On November 19, 2020, the Department of Unemployment Assistance (DUA) issued a Notice of Non-Monetary Issue Determination—COVID-19 Eligibility to the claimant, stating that she was not eligible for PUA benefits.
4. The claimant was injured on the job in New York in 2018 and began collecting worker's compensation. She was determined to be partially disabled. She is currently collecting worker's compensation for the same injury.
5. The claimant discussed a job interview for a Case Manager position via e-mail on February 05, 2020.
6. The claimant was hired by [Company A] for a case management position.
7. At [Company A], the claimant worked full-time from 9 a.m.-5 p.m. from Monday through Friday. Her job duties were to manage cases, file paperwork, meet with clients, and assist the clients with daily living. Her hourly rate was approximately \$20.00 per hour.
8. The claimant worked two (2) days at [Company A] as a case manager, on March 12, 2020 and March 13, 2020.
9. The claimant received two (2) checks in the amount of \$157.20 on April 16, 2020 and on May 14, 2020 from [Company A] for the two (2) days she worked.
10. At the end of the year, the claimant was not provided a 1099 or W-2 for her work with [Company A].
11. The claimant asked [A] [sic], an individual who works with [Company A], on multiple occasions for verification of her work with [Company A], but [A] [sic] said "I don't have the authority to do that... Sorry."
12. During this text exchange, [A] [sic] said "I called him [[B]] to tell him that you needed a letter for unemployment stating that you were willing to work but we didn't have the hours for you."
13. During another text exchange where the claimant again requested a letter, [A] [sic] responded "I will talk to [B]...I tried to call him but he didn't answer. He will only be able to write that you worked for a couple of days..."
14. The claimant never received the discussed letter from [Company A].

Credibility Assessment:

Although the claimant did not have any W-2's or 1099s for either 2019 or 2020, the claimant credibly testified that the employer was non-responsive to her requests for payment and for requests of verification for such employment. The text message exchange provided by the claimant showcases the employer's unwillingness to

provide the letter despite multiple attempts to receive an employment verification letter from [Company A]. However, during this text exchange, [A] [sic], an employee of [Company A], admitted that the claimant worked for [Company A] for a couple of days and that the company did not have the hours to give her. Moreover, the employer's extensive non-responsiveness to the claimant's requests supports the claimant's testimony that she had difficulty even receiving payment for the two (2) days she worked for the company. Although she was paid via check in April and in May 2020, the amount paid corresponds to the claimant's testimony that she only worked two (2) days; the claimant testified that she made \$20.00 per hour for an eight-hour shift which correlates the amount notated on the checks. The claimant was also very responsive and non-evasive throughout the hearing contributing to the credibility of her testimony.

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 for the references to "[A]" in Consolidated Findings ## 11–13 and in the credibility assessment. The representative from the employer who spoke at the initial hearing and whose name appears on the claimant's text messages was named "[C]," not [A]. *See* Remand Exhibit # 6. In adopting the remaining findings, we deem 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 reject the review examiner's legal conclusion that the claimant is not eligible for PUA benefits, as outlined below.

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 order to qualify for PUA benefits, the claimant must show that she is a covered individual with a listed COVID-19 related reason for being unemployed under the CARES Act. An eligible COVID-19 listed reason under the CARES Act at § 2102(a)(3)(A)(ii)(I)(gg), is that an individual will be eligible for PUA benefits if they were out of work as a result of the COVID-19 emergency, or that they were "scheduled to commence employment and d[id] not have a job or [were] unable to reach the job as a direct result of the COVID-19 public health emergency."

After remand, the review examiner found that the claimant was hired by [Company A], for a full-time case management position. *See* Consolidated Finding # 6. The claimant was to work from 9:00 a.m. to 5:00 p.m., Monday through Friday, at \$20.00 per hour. *See* Consolidated Finding # 7. The claimant worked two days for this employer, on March 12 and 13, 2020, for which she received two checks in the amount of \$157.20, on April 16 and May 14, 2020. *See* Consolidated Findings ## 8-9 and Hearings Exhibit # 6.

The review examiner made a credibility assessment that the claimant had performed services for the employer "for a couple of days," and became separated due to lack of work. The review

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

examiner cited the employer's unwillingness to provide basic employment verification information in determining that the claimant's testimony was credible, despite the claimant's own failure to produce any W-2s, Form 1099s, or tax returns from 2019 or 2020. 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). We see no reason to disturb this credibility assessment.

In view of the state and federal response to the COVID-19 public health emergency, as well as the claimant's difficulty in securing employment and financial documentation from her employer, we reasonably infer that she became unable to engage in any more work for this company when she filed her PUA claim that was effective March 8, 2020.²

Additionally, although not in the consolidated findings, the claimant testified that she had been performing this work in [City A], Massachusetts. This is corroborated by Exhibit 6, which includes copies of the paychecks issued by this employer and showing a [City A] address.³

The record supports a conclusion that the claimant performed services in Massachusetts for an employer for two days in March of 2020, and that these services were curtailed by the COVID-19 public health emergency declared by the federal and state governments in March of 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 the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.

N.B.: In view of the claimant's representation that she is currently collecting worker's compensation benefits for an injury she incurred while working in New York in 2018 (see Consolidated Finding # 4 and Remand Exhibit #8), the DUA should investigate the claimant's eligibility for benefits pursuant to G.L. c. 151A, §§ 25(d) and 1(a).



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 6, 2021

² We note in this regard, that, on March 10, 2020, Governor Baker declared a State of Emergency due to COVID-19 (Exec. Order No. 591), and, on March 23, 2020, he issued COVID-19 Order No. 13, closing all non-essential businesses in Massachusetts. *See* DUA UI Policy and Performance Memorandum (UIPP) 2021.03 (Jan. 29, 2021), p. 2.

³ 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).



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

JPCA/rh