

Where the claimant has produced wage documents that evidence her having Massachusetts 2020 work, and she had to stop working when she was furloughed from her retail job due to the COVID-19 public health emergency, she is entitled to PUA benefits under her Massachusetts claim.

**Board of Review
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Michael J. Albano
Member**

Issue ID: N6-FJV7-VVT6

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 29, 2020, which was denied in a determination issued on November 18, 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 17, 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 during 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 review additional employment documents. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. A second remand, for subsidiary findings from the record, was necessary to address the claimant's reasons for being unemployed. Subsequently, the review examiner issued a second set of consolidated findings of fact, as set forth below. 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 prove that she worked at a retail store in Massachusetts at the time of 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 PUA benefits with an effective date of March 29, 2020.
2. The claimant filed for the PUA claim using a Rhode Island address.
3. Prior to filing the PUA claim, the claimant worked as a salesperson in a retail store in Massachusetts.
4. The claimant was furloughed by the employer because of the COVID-19 public health emergency.
5. The first week of the claimant's unemployment began on April 5, 2020, when she was placed on an unpaid furlough by the employer. The claimant returned to work during the week beginning November 8, 2020.
6. The claimant has a 2020 W2 from the retail store showing wages of \$3,822.16.
7. The claimant has a pay slip from the retail store with a payment date of April 10, 2020, for the pay period March 22, 2020, through April 4, 2020. The claimant's gross earnings are listed as \$150.42. The pay slip lists the claimant's position and the retail store location in Massachusetts.

Credibility Assessment:

During the hearing, the documents submitted by the claimant were entered as remand exhibits. The submitted documentation supports the claimant's contention that she was furloughed beginning the week of April 5, 2020, until her return to work in November 2020. The claimant's testimony was credible, and consistent throughout both hearings.

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 prove that she is eligible for PUA benefits under her Massachusetts claim.

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

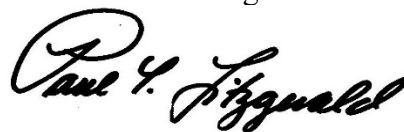
¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

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 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.”² Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.³ Therefore, in order to be eligible for benefits, the claimant must show that she had work in Massachusetts that was negatively affected for a listed COVID-19 reason.

The claimant satisfied the requirement to show she was working in Massachusetts during 2020 with the production of the 2020 Form W-2 and paystubs from her employer. *See Consolidated Finding # 7.* The first week of the claimant’s unemployment began on April 5, 2020, when she was placed on an unpaid furlough by the employer. *See Consolidated Finding # 5.* The claimant was furloughed by the employer because of the COVID-19 public health emergency. *See Consolidated Finding # 4.* These facts satisfy the requirements to receive PUA benefits under a Massachusetts claim by proving that she had work in Massachusetts during 2020 that was negatively affected for a listed COVID reason.

We, therefore, conclude as a matter of law that the claimant is entitled to receive PUA benefits for the COVID-19 listed reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk).

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 29, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION – December 16, 2021



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)**

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20 (Apr. 5, 2020), Attachment I, C(1)(k), p. I-6.

³ *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

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.

BGM/rh