

The claimant was a college student who was worked part-time at the college and lost his job when the school closed due to COVID-19. He was eligible for PUA for the loss of the college employment until his graduation in May 2020. He had a California job offer starting August 2020 with a delayed start until April 2021 because of the COVID-19 pandemic and subsequent restrictions. He is eligible for PUA from August 2020 until the new employment began.

**Board of Review
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Issue ID: N6-FJV8-332H

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 August 31, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and awarded PUA benefits beginning the week ending March 14, 2020, until the week ending May 30, 2020, and denied benefits beginning the week ending June 6, 2020 and indefinitely thereafter, in a decision rendered on February 4, 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 for additional evidence and testimony. 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 is denied benefits beginning the week ending June 6, 2020, because his unemployment is not a direct result of COVID-19, 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. In 2019 and through March 2020, while attending school full-time at a Massachusetts college, the claimant also worked part-time as a student intern in a work study job at his school. The work study job was scheduled to end when he graduated in the Spring of 2020.
2. On November 5, 2019, the claimant received a job offer to work as a computer software engineer for a company located in [City A], California. The job was scheduled to begin after he graduated in the spring of 2020. His start date was initially going to be August 17, 2020, and his starting salary was \$130,000. He was required to work full-time, physically in [City A].
3. On March 15, 2020, the college closed due to the COVID-19 pandemic. The claimant's work study job ended, and he returned to his family home in Arizona where he began remote learning.
4. The claimant graduated on May 28, 2020, and then moved to Maryland in July 2020.
5. The claimant filed a claim for PUA benefits, with an effective date of March 8, 2020 and a weekly benefit rate of \$267.00. For the period of March 8, 2020, to May 30, 2020, the claimant was paid \$267.00 in weekly PUA benefits.
6. On April 16, 2020, the claimant was notified by email that due to the COVID-19 pandemic, his start date for his new job was going to be delayed over a year. His new start date was August 9, 2021.
7. On July 3, 2020, his new employer deposited an electronic transfer of \$20,000.00 cash into his bank account. The claimant received a 1099 form with the cash deposit which stated, "ad hoc payment, non-employee compensation."
8. The claimant also received a \$2,000.00 credit to purchase products or services at his employer's company.
9. On April 5, 2021, the claimant started his new full-time job early, working remotely from his home. The claimant is scheduled to start physically working in [City A], California at this computer software engineer job on August 9, 2021.

Credibility Assessment:

At the remand hearing, the claimant credibly testified and presented documentation that in November 2019, he had received a job offer from a California employer for a job as a computer software engineer. This job was originally scheduled to start in California on August 17, 2020, after his graduation from college. On April 16, 2020, the claimant was notified by email that due to the COVID-19 pandemic, the job start date was delayed to August 9, 2021. During the original hearing, the

claimant did not testify about having a job offer that was rescinded because of COVID-19; however, in the remand hearing he clarified that point and confirmed that on April 5, 2021, he started working remotely for the new employer from his home in Arizona. The claimant further stated that he is scheduled to start physically working at the company's location in [City A], California on August 9, 2021. Based upon the evidence in the record, the claimant's work study job ended early, in March 2020, due to the pandemic. The job was supposed to end at the time of his graduation in May 2020. Additionally, he had a credible job offer in California scheduled to start on August 17, 2020, which was delayed due to the pandemic.

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's unemployment is not a direct result of COVID-19 after the week beginning August 16, 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 Labor¹. In order to qualify for PUA benefits, the claimant must show that he is a covered individual within the meaning of the CARES Act. Among the requirements to be considered a covered individual for PUA benefits is that the claimant self-certify that he is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa) – (kk). One of those listed reasons is that an individual's place of employment closed as a direct result of the COVID-19 public health emergency. *See* § 2102(a)(3)(A)(ii)(I)(jj). Another reason is that an individual was scheduled to start employment and does not have a job as a direct result of the COVID-19 public health emergency. *See* § 2102(a)(3)(A)(ii)(I)(gg); *see also* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 4 (Jan. 8, 2021), Attachment I, C(1), p. I-8.

The claimant was employed part-time at his college prior to the pandemic. *See* Consolidated Finding of Fact # 1. Because the college closed due to COVID-19 restrictions, he was unable to work. The review examiner awarded PUA benefits for the loss of the part-time job. Since the claimant was scheduled to graduate in May of 2020, his PUA benefits ended the week ending May 30, 2020. *See* Consolidated Finding of Fact # 5. We agree that pursuant to § 2102(a)(3)(A)(ii)(I)(jj), the claimant was entitled to PUA benefits for this period.

The record further shows that, in November 2019, he had received a job offer from a California employer for a job as a computer software engineer. This job was originally scheduled to start in California on August 17, 2020, after his graduation from college. *See* Consolidated Finding of Fact # 2. However, because of COVID-19, the start date was delayed. On April 5, 2021, he started

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

working remotely for the new employer from his home in Arizona and is scheduled to start physically working at the company's location in [City A], California on August 9, 2021. See Consolidated Finding of Fact # 9. This evidence demonstrates that the claimant was again unable to work, though for a different COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(gg).

We, therefore, conclude as a matter of law that that the claimant has shown that he was unable to work for the reasons listed under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg) and (jj). We further conclude that the claimant is not entitled to PUA benefits for the time between his graduation and the scheduled start date of his job offer in California, as his part-time job at the college would not have continued following his graduation.

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 8, 2020, through the week ending May 30, 2020, if otherwise eligible. The claimant is also entitled to receive PUA benefits for the week beginning August 16, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 9, 2021



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.

TJG/rh