

The claimant was a bus driver scheduled to begin employment in March 2020, but schools closed due to COVID-19 and the job was cancelled. He was also scheduled to begin driving for a summer camp from May 2020 until August 2020, but the camp closed due to COVID-19 shutdowns. He is eligible for PUA during this period, but not after August. Even though he was unable to work in September because he had to care for his children at home due to school closures, he did not show that he had a job or was scheduled to start a job.

Board of Review
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Issue ID: N6-FJV8-53RL

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 15, 2020, which was denied in a determination issued on November 13, 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 November 16, 2020. 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 to for additional evidence and testimony pertaining to his scheduled work in 2020. 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 has not carried his burden to show that he is eligible for a PUA claim in Massachusetts 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 Pandemic Unemployment (PUA) claim, effective March 15, 2020.

2. On November 13, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing him that he was not eligible to receive benefits beginning the week ending February 8, 2020. He was informed that he was not eligible to receive benefits, because he failed to respond with the appropriate documentation by the due date.
3. In 2019, the claimant worked at a summer camp.
4. In 2018, the claimant worked as a bus driver for [Company A].
5. Prior to schools closing, [Company A], had a lot of their bus drivers call out, because they feared contracting COVID-19.
6. [Company A] called the claimant and offered him a per-diem bus driver position.
7. The claimant was hired by [Company A] in March of 2020.
8. The claimant's son attends high school, and his youngest child attends middle school.
9. The claimant's son was available to take care of the other child if the claimant had to work for [Company A].
10. The claimant did not work for [Company A] in 2020, because of the COVID-19 pandemic. As a result of the pandemic, schools closed and there was no need for bus drivers.
11. The claimant was scheduled to work as a bus driver at Camp [B] in 2020. He was scheduled to work from May 18, 2020, until the end of August. However, the claimant did not work at Camp [B] because it closed due the pandemic.
12. The claimant was not scheduled to work after the summer of 2020. He moved to Florida in August of 2020. He was unable to work because the schools in Florida were closed. He had to stay home with his children, who were enrolled in remote learning.

Credibility Assessment:

The claimant provided credible testimony and documentation showing that he was scheduled to work at a summer camp in 2020. In support of his testimony, the claimant provided a signed letter from the director of the camp, stating that the claimant was scheduled to work during the summer of 2020, but was unable to due to the pandemic. The claimant was able to provide an email from the camp director, which corroborated the claimant's testimony. The claimant credibly

testified that he was scheduled to work at the camp from May 18, 2020, until the end of August. He also credibly testified that he was not scheduled to work after the summer of 2020. The claimant was unable to work in the fall of 2020 because his children were enrolled in remote learning.

The claimant provided credible testimony and documentation showing that the bus company offered him a position. The claimant worked for the bus company in 2018. The claimant credibly testified that if he worked for the bus company in 2020, his eldest child would have been able to take care of his other child. In support of his testimony, the claimant provided a signed letter from the manager of the bus company, which shows that he was offered a per-diem position in March 2020. He also provided an email, which shows that the letter came from the manager. In the first hearing, the claimant testified that in March 2020, the bus company offered him the position because many of their drivers called out because they feared contracting COVID-19. In this way, the claimant testified that he would not have worked for [Company A] in 2020 if there was no COVID-19. Nevertheless, after he was offered the per diem work, he did not end up receiving any due to the shutdown in schools caused by the COVID-19 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 has not carried his burden to show that he is eligible for PUA benefits in Massachusetts.

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 was scheduled to start employment and does not have a job as a direct result of the COVID-19 public health emergency. *See* CARES Act, § 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-7.

In this case, the record before us shows the claimant was scheduled to start two jobs as a bus driver but could not as a direct result of the COVID-19 public health emergency. One was for a bus company for the remainder of the school year, starting in March, 2020. *See* Consolidated

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

Findings ## 7 and 10. At the end of this job, the claimant was scheduled to begin a new job as bus driver at a summer camp. *See Consolidated Finding # 11.* The review examiner found that he was unable to perform the job that began in March, 2020, because schools closed due to the pandemic and there was no need for bus driving services. *See Consolidated Finding # 10.* Similarly, the summer camp job that was to begin on May 18, 2020, was cancelled because the summer camp was cancelled also due to the pandemic. *See Consolidated Finding # 11.* These findings show that the claimant was unemployed for the listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(gg), from March through August, 2020.

However, after August, 2020, the claimant has not demonstrated that he is eligible for PUA benefits. Although Consolidated Finding # 12 provides that when he moved to Florida, the claimant could not work because he had to stay home with his children, the finding further states that the claimant was not scheduled to work after the summer of 2020. Because he has not shown specific employment which he was unable to perform, we cannot conclude that he was unemployed or unable to work for a listed COVID-19 reason.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was unable to commence specific employment in Massachusetts from March through August, 2020, within the meaning of the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg), and is eligible for PUA benefits during this period

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 15, 2020, through the week ending August 29, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 13, 2021



Paul T. Fitzgerald, Esq.
Chairman



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