

The claimant is a New Jersey resident who operated a clothing store in Massachusetts. He demonstrated that, because of government restrictions, his place of employment was closed as a direct result of the COVID-19 public health emergency. Board held that he was out of work for a listed COVID-19 reason under CARES Act § 2102(a)(3)(A)(ii)(I)(jj).

**Board of Review
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Issue ID: N6-FJV8-649T

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 15, 2020, which was denied in a determination issued on November 16, 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 January 27, 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 to make subsidiary findings of fact pertaining to where the claimant performed his services. 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 did not establish that he was working at a retail clothing store in Massachusetts and affected by the COVID-19 public health emergency in any of the specific ways listed by the CARES Act, 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 September 16, 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. The claimant filed his claim using a New Jersey address.
4. The claimant's business address is [Address A], MA.
5. The claimant's home address is [Address B], New Jersey.
6. The claimant used his home address in New Jersey as the business mailing address.
7. In 2019, the claimant filed a joint federal tax return with his wife.
8. The business address listed on his 2019 Federal Schedule C is [Address B], New Jersey
9. The claimant resided at [Address C], MA, a cottage, when he operated the business.
10. The claimant did not have a rental agreement for the cottage.
11. The claimant paid for his cable at the cottage, and a bill regarding the cable at the cottage was sent to the claimant.
12. The claimant has had the store for six years.
13. The claimant was in Massachusetts in March 2020.
14. The claimant was able to reopen his store on June 20, 2020, because the lockdown ended.
15. The claimant closed his store and returned to New Jersey in early November 2020.
16. The claimant needed to stay home with his daughter, because his daughter was enrolled in online learning. The claimant must stay home with his daughter indefinitely.

[Credibility Assessment]:

It is not clear what documentation in the record would be from the claimant's Massachusetts tax return, and the claimant was not asked if he filed a 2019 Massachusetts tax return. Therefore, no finding of fact was made in response to Question 2(c) of the remand order. The claimant was specifically asked if he had a rental agreement for the [Address C] cottage, and he testified that he did not. The claimant was not asked how long he lived in the cottage during the hearing. Therefore, it is not clear when the claimant moved into the cottage, and no finding of fact was made in response to Question 3(b).

At the conclusion of the December 14, 2020, hearing, the claimant was asked to provide documentation of his business, including a utility bill. The claimant submitted the bill and the document was entered into evidence as Exhibit # 8 on December 28, 2020. The record was then closed.

The claimant provided credible testimony and documentation showing that he owned and operated a business in Massachusetts in 2020. In support of his testimony, the claimant provided a commercial lease, which shows that he rents space in [Address A Town], Massachusetts. The claimant also provided a cable bill which shows that he lived in Massachusetts during March 2020. The claimant also provided his 2019 federal Schedule C, which shows that he owns and operates a clothing store. He also credibly testified that he had to stop working because he had to return home to New Jersey to take care of his daughter, who was enrolled in online learning.

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 does not meet the CARES Act eligibility requirements.

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 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). Pursuant to § 2102(a)(3)(A)(ii)(I)(jj), one of those listed reasons is that the individual's place of employment is closed as a direct result of the COVID-19 public health emergency. Additionally, because the claimant is a New Jersey resident, he must show that he became unemployed in Massachusetts in order to be eligible to file a claim in Massachusetts.

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

See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 6 (Sep. 3, 2021), 4(c), p. I-7.

The consolidated findings of fact provide that the claimant is a New Jersey resident who operated a business in Massachusetts. See Consolidated Findings ## 3–6. The claimant resided in Massachusetts when he operated his business. See Consolidated Finding # 9. The claimant was in Massachusetts in March, 2020. See Consolidated Finding # 13. The claimant testified that he was forced to close his business in March, 2020 because of Massachusetts governmental restrictions imposed in response to COVID-19.² He reopened the business on June 20, 2020, when the governmental restrictions ended. See Consolidated Finding # 14. Therefore, the findings show that the claimant’s place of employment was closed as a direct result of the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that that the claimant has shown that he was unable to work in Massachusetts for a COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act.

The review examiner’s decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 15, 2020, through June 20, 2020, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 31, 2022



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

² This portion of the claimant’s testimony, while not explicitly incorporated into the review examiner’s findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in our decision today. 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).

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