

The claimant, a self-employed New Hampshire resident, had been travelling to Massachusetts courts to perform her legal research services. She was forced to stop working when the courts closed due to COVID-19. She has demonstrated that she became unemployed for a COVID-19 reason listed under the CARES Act and meets the eligibility criteria to open a PUA claim in Massachusetts.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-FJV8-73HH

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 in April, 2020, which was made effective February 23, 2020. Although initially approved, the DUA subsequently denied the claimant benefits 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 benefits in a decision rendered on February 12, 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 she had been working in Massachusetts when she became 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 afford the claimant an opportunity to submit additional evidence to show that she had been working in Massachusetts 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 original decision, which concluded that the claimant, a New Hampshire resident, did not submit sufficient documentary evidence to show that she had been working in Massachusetts at the time she became unemployed due to 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) with an effective date of February 23, 2020.
2. The claimant filed the PUA claim with a New Hampshire address.
3. The claimant worked as a self-employed legal researcher for a background check service provider (the company) between 2015 and 2020. The claimant worked in the [County A], [County B], and [County C] counties. The claimant was responsible for researching individuals to determine if they had either civil or criminal records.
4. The claimant was forced to stop working in her self-employment on March 17, 2020, when the Massachusetts courts closed due to COVID-19.
5. On March 20, 2020, the claimant emailed the company letting it know the Massachusetts courts will continue to be closed and that the claimant would continue to call asking for access to the court's computers to continue researching.
6. The claimant and the company were in contact on March 20, 2020, via email regarding the Massachusetts courts being closed and the impact this had on the claimant's ability to do her work.
7. The claimant received her last check for work done for the company in April of 2020.
8. The claimant has three (3) Statements of Activity (Statements) from the company for January, February, and March of 2020. The Statements show the name of the person researched, the jurisdiction the research took place, the type of research being done, the amount paid for each research, and the date the research was done.
9. The claimant's bank records indicate that she received payment from the company from January to April of 2020.
10. The claimant would be compensated the following month for all research she completed.
11. The claimant filed her 2020 Federal Income tax return.
12. The claimant's 2020 Form 1040 Schedule C Profit or Loss from Business shows the claimant suffered a loss of \$2,328.00.
13. The claimant's 2020 Form 1040 Schedule C Profit or Loss from Business lists the claimant's principal business or profession as legal research.

14. The claimant has a 2020 1099-NEC from the employer listing \$2,924.50 in non-employee compensation.
15. On November 13, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing her that she was not eligible to receive benefits beginning the week ending February 8, 2020. She was informed that she was not eligible to receive benefits, because she failed to respond with the appropriate documentation by the due date.
16. The claimant timely appealed the November 13, 2020, Notice of Non-Monetary Issue Determination.
17. Since the effective date of her claim, the claimant has been able to work. No physical ailment has prevented her from working.

Credibility Assessment:

The claimant and her documentation are deemed to be credible. The claimant's testimony is corroborated by the documentation that she presented prior to her remand hearing.

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. Based upon the consolidated findings and as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits on her Massachusetts claim.

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 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 the person was "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

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

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

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 impacted by the COVID-19 pandemic.

The claimant is a resident of New Hampshire. *See* Consolidated Finding # 2. During the initial hearing, her testimony described how she had to stop working in Massachusetts due to the COVID-19 public health emergency. However, because she did not submit documentary evidence to support that testimony, the review examiner concluded that the record lacked substantial evidence to show that she was eligible to file a PUA claim in Massachusetts. We remanded the case for the review examiner to consider additional documents showing her work in Massachusetts in 2020.

After remand, the record in this case includes substantial evidence, including both sworn testimony and documents, which establish that the claimant was forced to stop performing work in Massachusetts due to the COVID-19 public health emergency. This evidence is now captured in the consolidated findings. Specifically, the claimant had been working as a self-employed legal researcher, who traveled to Massachusetts courts in the counties of [County A], [County B], and [County C] to research individuals' criminal records. She was forced to stop performing her services when the Massachusetts courts shut down due to COVID-19 on March 17, 2020. *See* Consolidated Findings ## 3 and 4. Consolidated Findings ## 8 and 9 summarize the documentary evidence showing the Massachusetts locations where she worked in January through March, 2020, and the payments that she received for her work.

The claimant has satisfied the eligibility criteria under § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. She has shown that she was unemployed because the COVID-19 public health emergency severely limited her ability to continue performing her customary work activities, and thereby forced her to suspend such activities. She has also met her burden to show that she is eligible to file a PUA claim in Massachusetts, because she was performing her services here at the time she became unemployed.

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 one of the eligibility reasons established by the U.S. Secretary of Labor in accordance with § 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act.

Finally, we note that, during the hearing, the claimant testified that she filed her PUA claim in April, not in February, 2020, as she was not unemployed during February.⁴ For some reason, the DUA made her claim retroactive, effective February 23, 2020. Since the claimant's unemployment began on March 17, 2020, she is not eligible for any benefits prior to week beginning March 14, 2020.

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

⁴ 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).

The review examiner's decision is affirmed in part and reversed in part. The claimant is not entitled to receive PUA benefits during the period February 23 through March 16, 2020. The claimant is entitled to receive PUA benefits for the week beginning March 14, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 9, 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.

AB/rh