

A summer camp in Massachusetts had scheduled the claimant to work during preseason and over the summer as a camp counselor. The job offer was rescinded when the camp ceased in-person activities through the summer of 2020 due to the COVID-19 pandemic. He is eligible for PUA benefits during the period he would have worked.

**Board of Review
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Issue ID: N6-FJV8-75KD

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 April 26, 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 February 22, 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 consider additional documents which the claimant submitted on appeal and take additional evidence about the nature of the claimant's alleged job offer. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based on our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not unemployed because a job offer at a summer camp was rescinded due to the COVID-19 public health emergency, is supported by substantial and credible evidence and is free from error of law.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 PUA benefits, with an effective date of April 26, 2020. The Department of Unemployment Assistance (DUA) determined that the claimant has a benefit rate of \$267 per week on the claim.
2. The claimant filed the PUA claim using a Connecticut address.
3. On January 14, 2020, the [Name A] Camp, located in [Town A], MA, sent the claimant an offer of work e-mail for the employment period of June 6, 2020 to August 17, 2020.
4. On February 6, 2020, the [Name A] Camp sent the claimant a Hiring Packet for the employment period of June 6, 2020, to August 17, 2020.
5. The [Name A] Camp also sent a welcome staff e-mail on February 6, 2020.
6. On April 30, 2020, the [Name A] camp sent the claimant a closure e-mail stating the camp would not be opening for summer 2020.
7. On April 14, 2021, the [Name A] Camp sent the claimant a letter, stating that he was offered employment as a counselor/song leader on February 6, 2020. The position was to begin on June 12, 2020, and conclude on August 17, 2020. However, he was also scheduled to work the preseason at the camp on: April 16–19 (25 hrs.), April 23–26 (25 hrs.); May 7–10 (25 hrs.), May 12–17 (45 hrs.), May 20–25 (45 hrs.), and May 26–31 (45 hrs.). The letter states the camp did not run due to the COVID-19 pandemic.
8. The claimant could not work at the camp in 2020 because of the COVID-19 public health emergency.
9. The [Name A] Camp issued the claimant a 2020 W-2 showing \$610.56 in wages. The camp paid the claimant in 2020 for work that he had done at the camp in December of 2019.
10. The claimant had no offer of work or work lined up to begin after August 17, 2020, which would have been the end of the camp season.
11. The claimant filed 2020 Federal income taxes, and the tax return shows wages of \$611. The tax documents include a 2020 MA Form NR-PY.
12. The claimant was enrolled at University [A] in the fall of 2020. He was scheduled for all online classes.
13. On November 13, 2020, the DUA sent 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.
14. The claimant appealed the DUA's determination.

Credibility Assessment:

The claimant's testimony was consistent and credible. He testified that he was scheduled to work at a Massachusetts camp during the preseason (April and May 2020) and during the summer of 2020. However, he could not work for the camp because it closed due to the COVID-19 public health emergency. The testimony is supported by the communications from the camp and the 2020 income tax returns. There was no bona fide offer of employment following the scheduled employment end date of August 17, 2020, based upon the claimant's testimony. The claimant did not submit his 2019 taxes as requested by the Board. His father credibly testified that he did not make enough money to file taxes in 2019. He also stated that he thought he had submitted a 2019 income tax return to the Board. When asked about the 2020 W-2, the claimant stated he was paid in 2020 for work conducted at the end of the year in December 2019 at the camp.

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 was ineligible for PUA benefits.

The claimant in this case seeks PUA benefits, an unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor¹. 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. CARES Act, § 2102(a)(3)(A)(ii)(I)(gg). Additionally, as the claimant is a resident of Connecticut, he must prove that he lost work or a work opportunity in Massachusetts to be eligible under a Massachusetts claim.

In this case, the record before us shows the claimant was scheduled to work two different jobs for the camp. From April 16, 2020, until May 31, 2020, the claimant was scheduled to work specific dates and hours in the camp's preseason. Following that work, the claimant would begin approximately 11 weeks as a camp counselor/song leader from June 12 until August 17, 2020. *See Consolidated Findings # 7*. After remand, the review examiner found that neither job materialized due to the COVID-19 health emergency, which caused the camp to suspend all in-person activities through the summer of 2020. *See Consolidated Findings ## 6 and 8*. These findings show that the

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

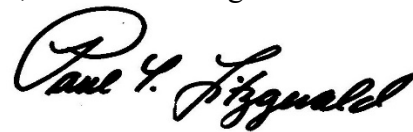
claimant was unemployed for the listed COVID-19 reason under § 2102(a)(3)(A)(ii)(I)(gg), from April 16, 2020, through August 17, 2020.

The claimant has not shown that he had any lost work beyond August 17, which was the end of camp's season. *See Consolidated Finding # 10.* The claimant has requested benefits in some weeks beyond August 17, 2020. In his original hearing testimony, claimant indicated he performed some remote work for the camp later in 2020, which he could do while attending college remotely. However, the claimant has produced no records of income for work performed at the camp in 2020 that occurred after the beginning of the COVID-19 public health emergency. *See Consolidate Finding # 9.* As a result, the review examiner found the claimant did not have any other offer of work or work lined up to begin after August 17, 2020. *See Consolidate Finding # 10.* Therefore, the claimant has not demonstrated that he is eligible for PUA benefits after August 17, 2020.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he was scheduled to start employment in Massachusetts from April 16, 2020, through August 17, 2020, but did not have a job as a direct result of the COVID-19 public health emergency. Pursuant to the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg), he is eligible for PUA benefits during this period.

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning April 19, 2020, through August 15, 2020, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 3, 2021



Paul T. Fitzgerald, Esq.
Chairman



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)**

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.

MS/rh