

The claimant worked as a truck driver in Massachusetts. His company furloughed him due to the COVID-19 public health emergency in March 2020, forcing him to suspend his delivery services. He is eligible for PUA benefits.

**Board of Review
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Issue ID: N6-FJV8-85RR

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 with the DUA, effective March 22, 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 11, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to show that he was working in Massachusetts in 2019 or in 2020. 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 to consider documents submitted with the claimant's appeal to the Board. 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 was ineligible for PUA benefits because he failed to establish that he lost work in Massachusetts at the time of 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 March 22, 2020.
2. The claimant filed the PUA claim using his Connecticut address.

3. In 2019 and 2020, the claimant performed services for [employer]. [Employer] is an office and medical supply product distributor with its office in Massachusetts.
4. In 2020, the claimant provided delivery services for [employer] in Massachusetts, New York, Connecticut, New Hampshire, and Rhode Island. The claimant has bills of lading showing a substantial portion of his delivery services were performed in Massachusetts.
5. The claimant came to the company warehouse from his home in Connecticut periodically to pick up products to deliver.
6. The claimant was furloughed by [employer] due to COVID-19. He had no work for the company from the end of April 2020 until March 2021.

Credibility Assessment:

At the beginning of the hearing, the documents submitted by the claimant were entered into the record. The claimant's unwavering assertion that he worked as a truck driver prior to the COVID-19 public health emergency was credible and further supported by documentation and testimony of a witness.

The comptroller of [employer] participated in the hearing. The comptroller credibly testified that the claimant had been employed by the company for many years and was a good employee. He further maintained that the claimant had been furloughed in 2020 because of the pandemic and was recalled in March 2021. The comptroller also confirmed that the primary [employer] warehouse is in Massachusetts and most [employer] products are distributed from the warehouse.

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 these new consolidated findings, we disagree with the review examiner's original legal conclusion that the claimant was not 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 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 criteria for eligibility established by the Secretary of

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

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 severally 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 where he was working at the time he became unemployed.³ Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was negatively impacted for a listed COVID-19 reason.

The claimant satisfied his burden to show that he provided delivery services in Massachusetts during 2019 and 2020 with production of 1099 MISC forms for 2019 and 2020 from a company with a Massachusetts address, his 2020 Non-Resident Massachusetts tax return with a Schedule C form attached, and delivery service receipts from 2019 and early 2020. *See* Exhibits 5, 6, and 7, respectively.⁴ In March of 2020, the company notified the claimant that, due to COVID-19, there would be no delivery service work for the claimant. *See* Consolidated Finding # 6. The record thus shows that the claimant had work in Massachusetts in 2019 and in 2020, and that he was forced to suspend his services due to the COVID-19 public health emergency.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he 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.

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

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

⁴ While not explicitly incorporated into the review examiner’s findings, Exhibits 5, 6, and 7 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).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits as of the week beginning March 22, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 13, 2022



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

KB/rh