

The claimant is a New Jersey resident who lived in Massachusetts and was employed at two art studios in Massachusetts. Because of government restrictions, her places of employment were closed as a direct result of the COVID-19 public health emergency. Also, for a period of time, she was unable to work due to COVID-19 symptoms. Board held that she was out of work for the listed COVID-19 reasons under CARES Act § 2102(a)(3)(A)(ii)(I)(aa) and (jj).

**Board of Review
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Issue ID: N6-FJV8-F6KP

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 8, 2020, which was denied in a determination issued on November 19, 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 26, 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 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 submitted with her appeal. 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 that the claimant is ineligible for PUA benefits because she had no authentic payment documentation to show work performed in Massachusetts in 2020, or any documentation that she was experiencing symptoms and out of work due to COVID-19, 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 8, 2020.
2. The claimant filed the PUA claim using her home address in New Jersey. She also used a Massachusetts address she lived at while she was attending a University in Massachusetts.
3. On November 19, 2020, the Department of Unemployment Assistance (DUA) sent the claimant a Notice of Non-Monetary Issue Determination (COVID-19 Eligibility) informing her she was not eligible to receive benefits.
4. In 2019 and 2020, the claimant was a self-employed artist working for an artist and professor at the [City A], Massachusetts university from which she graduated in May 2019. She also worked for the owner of an artist studio located in [City B], Massachusetts.
5. The claimant worked as a studio assistant to the professor beginning in May 2019 until February 4, 2020. She also provided administrative services to the owner of the artist studio from February 2019 until January 16, 2020.
6. The claimant has invoices, and Venmo receipts showing she performed services for the professor and the studio owner in 2019, and January and February of 2020. The claimant was typically paid weekly, on or about the last day she worked. The studio owner mistakenly neglected to pay the claimant for her last day of services on January 16, 2020.
7. In 2020, the claimant performed services for both the professor and the studio owner in Massachusetts and remotely.
8. The claimant filed her 2019 State taxes in Massachusetts. The 2019 Schedule C she filed reported gross income of \$19,460 and net income of \$2,701.
9. The claimant did not file 2020 federal or state tax returns. She filed a request for an extension to file because she did not know what portion of her income if any, would be taxable. This included her income from her self-employment and income she received from her PUA claim.
10. In late January 2020, the claimant began to feel ill. She went to a Massachusetts emergency room on February 5, 2020, where she was diagnosed and treated for influenza. The claimant was unable to work after February 5, 2020, due to her viral infection diagnosis. The claimant was subsequently advised by her doctor that her illness was probably from COVID-19.
11. By the time the claimant was feeling able to return to work in March, after her February illness, the COVID-19 public health emergency had been declared and the University site and [City B] studio site she had been working at were

forced to close. The claimant returned back to her home in New Jersey at this time.

12. The claimant was notified her services were no longer needed via an email from the professor on March 13, 2020, and by a telephone call with the studio owner around the same time.
13. The claimant performed 3 hours of remote work for the studio owner on or about March 27, 2020, for which she was paid via check on the same day. The studio owner included payment for the January 16, 2020, hours she had mistakenly neglected to pay the claimant.
14. The claimant performed 3 hours of remote work for the studio owner on or about March 27, 2020, for which she was paid via check on the same day. The studio owner included payment for the January 16, 2020, hours she had mistakenly neglected to pay the claimant.

Credibility Assessment:

During the hearing, the documents requested by the Board of Review were entered into evidence. The documents entered into the record provided a more complete view of the claimant's self-employment work history in 2019 and 2020. Furthermore, the claimant's testimony in response to the Board's questions was credible, precise, and consistent throughout the hearing and supported by this documentation. Although the claimant candidly acknowledged she had not yet filed her 2020 taxes as of the remanded hearing date, the explanation as to why she had not done so was plausible. The claimant clearly explained she was advised by her accountant to extend her filing due to the 1099G income she received from her PUA claim, which is in dispute. It is reasonable to believe an accountant would advise a client to defer a tax filing for any potentially disputed income. In addition, although the two clients the claimant performed services for were available to testify at the remanded hearing, this was not necessary, as sufficient testimony and evidence was presented and found to be credible.

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 she 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 she 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. An additional reason under § 2102(a)(3)(A)(ii)(I)(aa), is that an individual was unable to work because she was diagnosed with COVID-19 or experiencing symptoms of COVID-19 and was seeking a medical diagnosis. Because the claimant is a New Jersey resident, she must also show that she became unemployed in Massachusetts in order to be eligible to file a claim in Massachusetts.

The consolidated findings provide that the claimant was a self-employed artist working for an artist and professor at a university in [City A], Massachusetts. She also worked for the owner of an artist studio located in [City B], Massachusetts. *See Consolidated Findings ## 4–5.* The claimant has invoices and receipts for the services she performed for the professor at the art studio in January and February, 2020. *See Consolidated Finding # 6.* When the claimant was able to return to work in March, 2020, following a brief illness, the COVID-19 public health emergency had been declared and both studios where she performed work were forced to close. The claimant was notified that her services were no longer needed via an e-mail from the professor on March 13, 2020, and by a telephone call with the studio owner around the same time. *See Consolidated Findings ## 11–12.* These findings show that the claimant’s place of employment was closed as a direct result of the COVID-19 public health emergency.

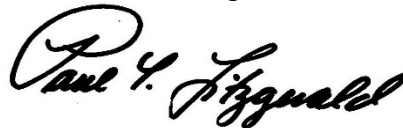
The consolidated findings further provide that in late January, 2020, the claimant began feeling ill. She went to a Massachusetts emergency room on February 5, 2020, where she was diagnosed and treated for influenza. The claimant was unable to work after February 5, 2020, due to her viral infection diagnosis, and was subsequently advised by her doctor that her illness was probably from COVID-19. *See Consolidated Finding # 10.* The claimant submitted medical bills and invoices, including physician notes, from her February 5, 2020, visit. The physician notes make a diagnosis of “influenza due to other identified influenza virus with other manifestations.” It was also noted she exhibited chills, fever, fatigue, and congestion. *See Remand Exhibit # 6, Progress Notes 2/5/2020, page 3.*² While the claimant has not established that she qualified for benefits due to testing positive for the coronavirus, she was experiencing some symptoms commonly known to be consistent with a COVID-19 medical diagnosis. This is reinforced by that fact that her doctor advised that her illness was probably from COVID-19. The medical documentation showing similar symptoms consistent with COVID-19, the lack of available COVID-19 testing at the time of the claimant’s medical visit on February 5, 2020, and her doctor’s statement lead us to believe that it is more likely than not that the claimant had COVID-19.

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

² While not explicitly incorporated into the review examiner’s findings, Remand Exhibit 6 is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

We, therefore, conclude as a matter of law that that the claimant has shown that she was unable to work in Massachusetts for the COVID-19 listed reasons under §§ 2102(a)(3)(A)(ii)(I)(aa) and (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 8, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 16, 2021



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