

Uber driver who experienced a significant diminution in demand for his services was entitled to PUA benefits in March, 2020. However, because the reason he stopped working in April, 2020 was due to general fear of exposure to the COVID-19 virus, he no longer had a listed COVID-related reason under the CARES Act to qualify for further PUA benefits.

**Board of Review
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Issue ID: N6-FJV8-N9T8

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, effective March 8, 2020, which was denied in a determination issued on November 24, 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 March 8, 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 working in Massachusetts when he 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 from Massachusetts. 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 evidence submitted with the claimant's Board of Review appeal. After the remand hearing, 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 qualify for PUA benefits in Massachusetts because he had not shown that he was working here at the time he became unemployed due to the pandemic, 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 on April 22, 2020, with an effective date of March 8, 2020. The claimant certified that the first date COVID-19 impacted their work was on March 11, 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's son assisted the claimant in filing the PUA claim using a New Hampshire address.
3. The claimant has a valid Massachusetts Driver's License with a Massachusetts address, which expires on December 13, 2023.
4. In 2020, the claimant performed services as a rideshare driver for [Ride share service]. The claimant was performing these services from January 1, 2020 to March 2020. The claimant has multiple documents to show this work: one yearly summary of their 2020 rides and income, three monthly summaries for their rides and income, and four images of specific rides in 2020.
5. The yearly summary shows their rides in 2020, and the first three monthly summaries are for January through March of 2020.
6. In January 2020, the claimant had 298 rides for a gross income of \$4,967.82. In February 2020, the claimant had 264 rides for a gross income of \$4041.46. In March 2020, the claimant had 246 rides for a gross income of \$4025.34. The yearly summary for 2020 shows 800 rides, which is the summation of the three monthly summaries provided.
7. The rides shown in the four photos occurred on four separate dates: January 7, 2020; February 28, 2020; February 29, 2020; and March 2, 2020.
8. The claimant's residency was at his sister's house, which is the address on their Massachusetts Driver's License. The claimant worked in and around a city in Massachusetts, primarily providing rush hour and airport rides. While residing in Massachusetts, the claimant did not work in New Hampshire unless the rideshare application led them to perform work there.
9. The claimant's work saw a decline in February and March of 2020, and the claimant stopped work completely during or before the week ending April 4, 2020.
10. The claimant's reason for stopping work was that the pandemic reduced their requested rides during peak hours from three or four clients per hour to approximately 1 client per hour by March 11, 2020. This effect was caused by the lack of requested rush hour and airport rides during the pandemic.
11. On an unknown date after their work had become affected in March and April 2020, the claimant moved to New Hampshire and self-isolated at their son's home, which is the New Hampshire address listed on their application. The claimant remains self-isolated at the New Hampshire residence.

12. While in New Hampshire at their son's home, the claimant does not maintain the Massachusetts address with their sister.
13. As of September 2, 2021 (the remand hearing date), the claimant has not returned to work and has not resumed performing services as a driver. The claimant has fears concerning COVID-19 caused by their elderly age and the projected resurgence of COVID-19 through the Delta variant.
14. The claimant was not advised to quarantine or otherwise stop working by a medical professional as a result of the COVID-19 pandemic.
15. The claimant was not prevented from working as a rideshare driver by a travel restriction or other government order prior to their stoppage during the COVID-19 emergency.
16. On November 24, 2020, the DUA sent the claimant a Notice of Non-Monetary Issue Determination, informing them that they were not eligible to receive benefits beginning the week ending February 8, 2020.

Credibility Assessment:

The claimant provided the additional evidence of their work performed in Massachusetts to the Board of Review. This evidence includes tax summaries of their rides and income broken down by month along with four images of rides performed in Massachusetts. These documents appear credible and are aligned with the claimant's testimony in both the initial hearing and the remand hearing. The claimant credibly testified that they stopped work in March 2020. This is corroborated through the fact that the summation of the January through March monthly tax summaries is equal to the yearly summary provided.

Concerning the claimant stopping their work, the claimant's reason involves their elderly age and fears of a COVID-19 infection, but the claimant was not advised by a medical professional to self-isolate or quarantine. In both hearings, the main reasons the claimant stopped working was because their work was not providing sufficient income for the risk and their clients had been severely reduced. The claimant credibly testified that their main source of income was from rush hour and airport travel. In the remand hearing, the claimant further testified that their rides per hour were reduced from three or four prior to the pandemic to only one. During both hearings, the claimant testified that they stopped work on March 8, 2020 and moved from Massachusetts to New Hampshire.

Although this testimony of the date of impact is consistent, the date is not clearly established through the documentary evidence. The claimant remained firm in testimony on the date in early March for the impact and last ride performed. However, the documents show a similar level of rides performed in March 2020 as to previous months that year. If this is true, the claimant would have performed a similar amount of rides in the first eight days of March 2020 as they did in all of

February 2020. Although the rides for March 2020 remained at a similar level to January and February of 2020, the claimant's documents do show three key points of clarity. First, the claimant's work did have a decline in the volume of rides performed measuring approximately 17.5% (from 298 rides in January to 246 rides in March). Second, the claimant did suffer a decline in income of approximately 19% (from \$4967.82 in January to \$4025.34 in March 2020). Third, the claimant put a stop to their work before April of 2020, as the yearly summary shows no rides outside of January through March of 2020. With this in mind, the documentary evidence strongly tends to show the claimant continued working at a reduced amount past the date they filed for the claim to be effective, but eventually stopped completely by April 2020.

Concerning the claimant's address and the location of their work, the claimant credibly testified in the initial hearing that they worked from their sister's house in Massachusetts, the address on their driver's license. The claimant credibly testified in the remand hearing that this fact was true as well. In the initial hearing, the claimant testified that they moved to their son's address, the address on the PUA claim in New Hampshire, when the pandemic began. This timeframe is less credible considering the above reasoning for the date of their impact; however, the claimant did credibly testify that the move occurred after they put an end to their work in Massachusetts. In the remand hearing, the claimant further clarified that they moved to the son's address to self-isolate with their family and never worked from the New Hampshire address. The claimant credibly testified in both hearings that the son put the New Hampshire address on the PUA claim while assisting them.

It is credible that the claimant was residing in Massachusetts before the pandemic through their consistent testimony during both hearings and unexpired Massachusetts Driver's License. It is credible that the claimant was working in Massachusetts given the claimant's tax summaries and the images of four rides performed in Massachusetts. It is credible that the claimant's work was impacted given the decline in volume of rides and of income from rides in March of 2020 and the complete stoppage of work before April 2020.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We accept Consolidated Finding # 10 insofar as it states one of the reasons that the claimant stopped working, but note that, during the hearing, the claimant was insistent that there were two other reasons, as explained below. In adopting the remaining findings, we deem 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 qualify for any PUA benefits from 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 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 Even if not suspended, a significant diminution of a claimant’s customary or usual services due to the pandemic has also been determined to constitute an approved COVID-19 listed reason under § 2102(a)(3)(A)(ii)(I)(kk).³ Further, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.⁴ Therefore, in order to be eligible for benefits, the claimant must show that he had work in Massachusetts that was diminished or stopped by the COVID-19 pandemic.

In this case, the claimant seeks PUA benefits beginning March 8, 2020, the effective date of his claim. The consolidated findings show that the claimant was self-employed as a rideshare driver in Massachusetts from January through March, 2020, working primarily during rush hour and providing rides to and from the airport. *See Consolidated Findings ## 4 and 8.* They further provide that he had fewer customers in February and March, 2020, than in January, because of the drop in demand for his services due to the COVID-19 pandemic. *See Consolidated Findings ## 6 and 10.* Specifically, a drop from 298 rides in January to 246 in March shows a nearly 18% drop in customers. *See Consolidated Finding # 6.* These findings establish that the claimant experienced a significant diminution of his customary services due to the COVID-19 public health emergency.

However, as observed in the review examiner’s credibility assessment, the evidence shows that the claimant stopped performing any rideshare services beginning in April, 2020. *See Consolidated Finding # 9.* We must consider whether this complete suspension of services was for a reason that would render him eligible to continue receiving PUA benefits under the CARES Act.

During the remand hearing, the claimant repeatedly stated that there were three reasons for stopping his work: (1) the news reported that the COVID-19 pandemic was getting worse and there was no mask mandate at the time; (2) his family asked him to stop driving because he was at high risk due to being nearly 60 years old; and (3) he had only about one customer per hour.⁵ One customer per hour shows that there were still some ridesharing services which the claimant could have performed. Thus, it is apparent that it was the other two factors which drove his decision to completely stop performing his services.

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.

³ *See* UIPL 16-20, Change 6 (Sept. 3, 2021), (kk)(1), p. I-3 – I-4.

⁴ *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

⁵ While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony 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).

Although nearly 60 years old, the claimant had not been advised to quarantine or stop working by a medical professional because he was at high risk for complications if he contracted COVID-19. *See* Consolidated Finding # 14. At the time, he was also not prevented from performing his services due to a travel restriction or other government order. *See* Consolidated Finding # 15. Given the pressure from his family and his own fear of the virus from watching the news, it is understandable that he might choose to stop working at the end of March, 2020. However, the U.S. Department of Labor has stated, “[w]ithout having been advised by a health care provider to self-quarantine, an individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-related criteria for PUA, is not PUA eligible.”⁶ In short, there was work available and he voluntarily stopped working due to general fear of exposure to the COVID-19 virus. This does not meet the criteria for PUA benefits under the CARES Act.

We, therefore, conclude as a matter of law that the claimant met his burden to show that, while he continued to perform his ride-sharing services, he experienced a significant diminution of services and is eligible for benefits pursuant to the CARES Act, § 2102(a)(3)(A)(ii)(I)(kk). We further conclude that the claimant was no longer eligible for PUA benefits once he stopped performing any services, as it was not for a reason listed under the statute.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits from the week beginning March 8 through April 4, 2020, if otherwise eligible. The claimant is not entitled to receive PUA benefits as of the week beginning April 5, 2020.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 21, 2022



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.

⁶ UIPL 16-20, Change 1, Attachment I, F, question 41, p. I-10.

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